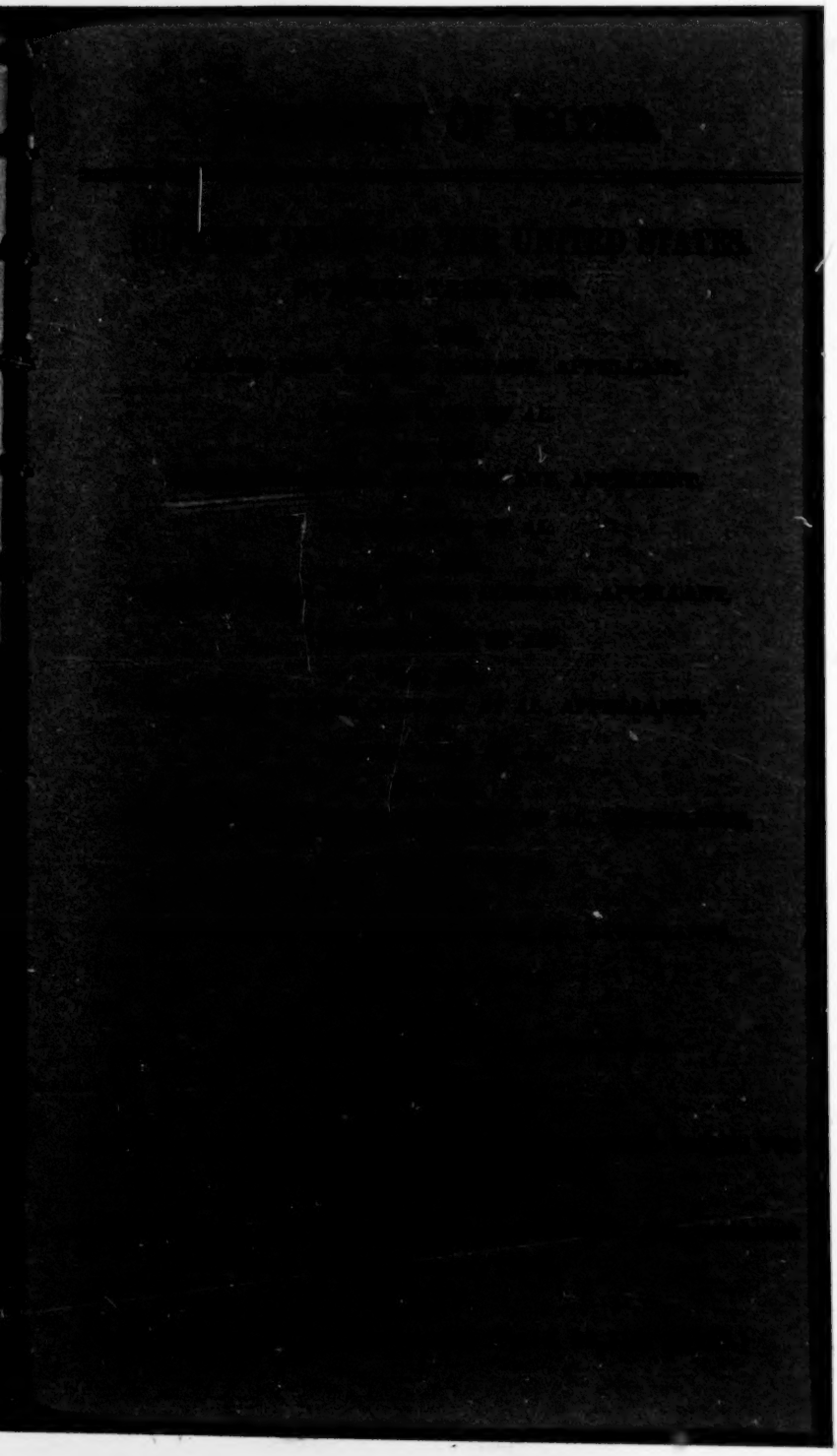


(29,110, 29,111, 29,112, 29,113, 29,114, 29,115, 29,116.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 560.

OLIVER IRON MINING COMPANY, APPELLANT,

vs.

SAMUEL LORD *ET AL.*

No. 561.

CLEVELAND-CLIFFS IRON COMPANY, APPELLANT,

vs.

SAMUEL LORD *ET AL.*

No. 562.

MESABA-CLIFFS IRON MINING COMPANY, APPELLANT,

vs.

SAMUEL LORD *ET AL.*

No. 563.

BENNETT MINING COMPANY *ET AL.*, APPELLANTS,

vs.

SAMUEL LORD *ET AL.*

No. 564.

REPUBLIC IRON & STEEL COMPANY *ET AL.*, APPELLANTS,

vs.

SAMUEL LORD *ET AL.*

No. 565.

THE BIWABIK MINING COMPANY *ET AL.*, APPELLANTS,

vs.

SAMUEL LORD *ET AL.*

No. 566.

INTER-STATE IRON COMPANY, APPELLANT,

vs.

SAMUEL LORD *ET AL.*

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

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United States District Court, District of Minnesota, Fifth Division.

No. 72-E.

OLIVER IRON MINING COMPANY

vs.

SAMUEL LORD et al.

No. 73-E.

THE CLEVELAND-CLIFFS IRON COMPANY

vs.

SAMUEL LORD et al.

No. 74-E.

THE MESABA-CLIFFS IRON MINING COMPANY

vs.

SAMUEL LORD et al.

No. 75-E.

BENNETT MINING COMPANY et al.

vs.

SAMUEL LORD et al.

No. 76-E.

REPUBLIC IRON & STEEL COMPANY et al.

vs.

SAMUEL LORD et al.

No. 77-E.

THE BIWABIK MINING COMPANY et al.

vs.

SAMUEL LORD et al.

No. 78-E.

INTER-STATE IRON COMPANY et al.

vs.

SAMUEL LORD et al.

2 *Appearances.*

Messrs. C. A. Severance and George W. Morgan, St. Paul, Minnesota.

Messrs. Frank D. Adams and Elmer F. Blu, Duluth, Minnesota, Solicitors for Plaintiff Oliver Iron Mining Company.

Messrs. W. D. Bailey and A. C. Gillett, Duluth, Minnesota, Solicitors for Plaintiffs Bennett Mining Company et al. and Republic Iron & Steel Company et al.

Messrs. Howard T. Abbott and E. W. MacPherran, Duluth, Minnesota, Solicitors for Plaintiffs Inter-State Iron Company and Biwabik Mining Company et al.

H. J. Grannis, Esq., Duluth, Minnesota, Solicitor for Plaintiffs Cleveland-Cliffs Iron Company and Mesaba-Cliffs Iron Mining Company.

Messrs. Clifford L. Hilton, Egbert S. Oakley and Montreville J. Brown, St. Paul, Minnesota, Solicitors for Defendants.

Pleas before the Honorable the Judges of the United States District Court, District of Minnesota.

Be it remembered That on the 24th day of January, A. D. 1922, came the Plaintiff, Oliver Iron Mining Company, by its attorneys, and filed in the Clerk's office of said court its Bill of Complaint, which is in the words and figures following, to-wit:

3 In the District Court of the United States, District of Minnesota, Fifth Division.

Bill of Complaint.

OLIVER IRON MINING COMPANY, Plaintiff,

vs.

SAMUEL LORD, JAMES G. ARMSON, and ODIN HALDEN, Constituting the Minnesota Tax Commission; Clifford L. Hilton, Attorney General of Minnesota; Raymond P. Chase, State Auditor of Minnesota, and Henry Rines, State Treasurer of Minnesota, Defendants.

To the Judges of the District Court of the United States for the District of Minnesota:

Oliver Iron Mining Company, a corporation organized and existing under the laws of the State of Minnesota and having its principal

place of business in the City of Duluth in said State and a citizen of said State, brings this its bill of complaint against Samuel Lord, a resident of Dodge County, James G. Armson, a resident of Washington County, Odin Halden, a resident of St. Louis County, Clifford L. Hilton, a resident of Ramsey County, Raymond P. Chase, a resident of Anoka County, and Henry Rines, a resident of Kanabec County, and all residents and citizens of the State of Minnesota, and complains and says that:

1. The plaintiff, Oliver Iron Mining Company, is and during the year 1921 was and for a long time prior thereto had been engaged in the business of mining and producing iron ore from a large number, to-wit: upwards of forty iron mines, located in the Counties of Lake, St. Louis and Itasca in the State of Minnesota.

2. The defendants Samuel Lord, James G. Armson and Odin Halden are the duly appointed members of and constitute the
4 Minnesota Tax Commission of said State; the defendant Clifford L. Hilton is the duly elected and acting Attorney General of said State; the defendant Raymond P. Chase is the duly elected and acting State Auditor of said State; the defendant Henry Rines is the duly elected and acting State Treasurer of said State.

3. This is a suit in equity arising under the Constitution of the United States in that the plaintiff seeks to enjoin said defendants from acting under or in pursuance of or from in any way carrying out or enforcing the provisions of a certain Act of the Legislature of the State of Minnesota, being Chapter 223 of the Laws of Minnesota for 1921, upon the ground that said statute and any and all acts done or attempted to be done thereunder by said defendants are and would be in violation of the Constitution of the United States. The taxes which this plaintiff would be required to pay for the year 1921, under said Act, exceeds the sum of $3,000, and the matter in dispute in this suit exceeds, exclusive of interest and costs, the sum of $3,000.

4. The legislature of the State of Minnesota enacted Chapter 223 of the Laws of Minnesota, 1921, entitled "An act providing for the imposition of a tax upon persons, co-partnerships, companies, joint stock companies, corporations, and associations however organized engaged in the business of mining or producing iron ore and other ores, for enforcing and collecting the same and prescribing penalties for the violation thereof," which said act received the approval of the Governor on April 11, 1921. A copy of said act is attached to and made a part of this bill of complaint, being the last page of Exhibit B hereof.

5. The said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, and claiming to act in compliance with the provisions of said Act, heretofore and during the month of January, 1922, sent to this plaintiff and this plaintiff received from said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, a notice calling

upon this plaintiff to file with said Samuel Lord, James G.
5 Armson and Odin Halden, acting as the Minnesota Tax Commission, under oath, a report as required by Section 3 of said Act in the form prescribed by said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, for the calendar year 1921, giving complete information in answer to the questions enumerated in said form with reference to mining operations on each of the tracts and parcels of land described in the list hereto attached and made a part hereof, marked Exhibit A. The form of notice and report prescribed by said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, received by this plaintiff is hereto attached and made a part hereof, marked Exhibit B.

6. The said Act, for the reasons and upon the grounds hereinafter more specifically stated, is unconstitutional, and therefore this plaintiff is not required to file said report or pay the tax thereby imposed or otherwise comply with said Act. However, upon the failure of this plaintiff so to file said report on or before the 1st day of February, 1922, said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, are required by Section 6 of said Act, and threaten to proceed upon such information as they may possess or obtain, to ascertain the kind and amount of ore mined or produced by this plaintiff, together with the valuation thereof, and thereupon to find and determine the amount of the tax due or claimed to be due from this plaintiff and to add thereto a penalty for the failure of this plaintiff so to report which will be equal to ten per cent of the tax so determined or attempted to be imposed and treated as a part thereof. Said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, are further authorized by said Act and threaten upon the failure of this plaintiff to make such report, to demand from this plaintiff, under Section 13 of said Act, the inspection and examination of all books, way-
bills, inventories, correspondence and memoranda relating
6 to or used in the transaction of plaintiff's business, and upon the failure of plaintiff to furnish the same, under the provisions of said section of said Act, plaintiff will be guilty of a gross misdemeanor and subject to punishment therefor as provided by law. Said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, are further required, under Section 8 of said Act, and threaten, on or before May 1st, 1922, to certify the amount of the tax so determined and the penalty thereon to the defendant Raymond P. Chase, as State Auditor. The legislature of the State of Minnesota in Chapter 377 Laws of 1921 made a specific appropriation of moneys for the Minnesota Tax Commission for the maintenance, carrying out and administering of the provisions of said Act. Said Raymond P. Chase, as State Auditor, is required by Section 8 of said Act, and threatens, to make his draft for the amount so certified and place the same in the hands of the defendant, Henry Rines, as State Treasurer, for collection. In case the tax provided for by said Act is not paid before June 1st, 1922, a penalty of ten

per cent thereof will immediately accrue under the provisions of Section 9 of said Act, and thereafter one per cent per month will be added to such tax and penalty while the same remains unpaid. Said defendant Henry Rines, as State Treasurer, is required by Section 11 of said Act, and threatens to attempt to collect said draft, and upon the refusal of this plaintiff to pay the same to deliver the same to the defendant Clifford L. Hilton, as Attorney General. Said Clifford L. Hilton, as Attorney General, under the provisions of said Section 11 of said Act, is required, and threatens to bring action thereon against this plaintiff for the amount of such draft, together with interest, penalties and costs. If judgment is obtained against this plaintiff in said action, the same would, under the provisions of said Act, bear interest at the rate of 1% per month, which said amount would be in the nature of and would in fact be a penalty upon this plaintiff. Said persons defendant will severally so act wrongfully and unlawfully unless restrained therefrom by order of this court.

7 7. This plaintiff is the owner in fee, or the lessee or the operator of said properties described in Exhibit A as indicated upon said Exhibit A for each of said properties respectively, and mines and produces, and during the calendar year 1921 did mine and produce, iron ore therefrom; and this plaintiff is the person who would be obliged to pay either finally or in the first instance all taxes levied and assessed under said Act against said properties or the iron ore therein, or the iron ore mined therefrom, or upon the business or occupation of mining or producing iron ore therefrom, or upon the profits or income from said iron ore or from the business or occupation of mining or producing the same.

8. The tax imposed or attempted to be imposed by said Act is a property tax. Iron ore, whether mined or unmined, is classified as a single class for taxation purposes, under the laws of the State of Minnesota, Chapter 483, Laws 1913, and is subject to the general ad valorem property tax. Chapter 223, Laws of 1921, imposes a tax upon iron ore mined in a given calendar year. Therefore, in the year in which any particular iron ore is mined two taxes would be imposed upon that ore, whereas in said year ore that was still in the ground or ore that had been mined in previous years but was left in stockpile in Minnesota would be subject to but one tax. By reason of the facts alleged, this plaintiff, who mined and removed iron ore as hereinbefore set forth during the calendar year 1921, is denied the equal protection of the laws in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States, and the said act results in a violation of the provisions of Article IX, Section 1, of the Constitution of the State of Minnesota, providing that taxes shall be uniform upon the same class of subjects.

9. Further said tax considered as a property tax violates the provisions of the Fourteenth Amendment of the Constitution of
8 the United States guaranteeing equal protection of the laws, and the provisions of Article IX, Section 1, Constitution of

the State of Minnesota, providing that taxes shall be uniform upon the same class of subjects, in the following respects:

(*a*) This plaintiff operates its mines in a highly efficient and economical manner. The Act imposes a higher tax upon ore produced by the efficient and economical operator than upon the insufficient and wasteful operator for the reason that the former is permitted under the Act a lower deduction by reason of his lower operating costs allowed to be deducted under Section 2 of said Act, and has to pay upon a higher taxable valuation.

(*b*) This plaintiff operates both open pit mines and underground mines, as do other persons engaged in mining in Minnesota, some persons so engaged operating solely open pit mines, and other persons operating solely underground mines. Paragraphs 2 and 3 of Section 2 of said Act provide for certain deductions in the case of open pit and underground mines respectively. There is a difference in the amount of the expenditures per ton of ore allowed as deductions as between open pit mines on the one hand and underground mines on the other, and also as between different open pit mines and as between different underground mines. The cost of opening up open pit mines by removing the overburden, or underground mines by the sinking and construction of shafts and running drifts, was much lower in years past than it has been in recent years. The cost further varies in any given year as between different properties because of physical differences in the properties, the location of said properties, and other factors. No deduction is allowed for interest and other carrying charges in connection with the development or construction work covered by said items, performed in previous years.

(*c*) The proportion which the tonnage produced bears to the total tonnage in a given mine, varies as between the properties operated by this plaintiff, and also as between properties operated by this plaintiff and other persons. The act permits a deduction of a percentage of the ad valorem taxes levied for the year
9 against the realty in which the ore is deposited equal to the percentage that the tons mined or produced during such year bears to the total tonnage in the mine. Ore produced from a mine in which the ratio of production to total tonnage is high therefore has a taxable value which is lower than ore produced from a mine where said ratio is low. Said provision therefore results in inequality and lack of uniformity.

(*d*) The tax rates vary greatly in the different localities where the mines of this plaintiff and other operators are situated, and therefore the ad valorem taxes levied against said properties vary greatly, thus resulting in unequal and un-uniform deductions under said provisions of said section.

(*e*) Section 2 provides that there shall be deducted from the value of the ore at the place where the same is brought to the surface of the earth for the purpose of determining the taxable value of said ores, among other items, the amount of royalties paid on the amount

of ore mined or produced during the year. This plaintiff owns in fee, as aforesaid, certain lands listed on Exhibit A, from which it mined or produced iron ore during the year 1921 upon which it will be required by said Act to pay taxes. No deduction equivalent to royalties paid on ore mined or produced from leased lands, is permitted to the owner in fee who mines or produces ore from its own properties. Royalties vary greatly from approximately 25 cents per ton to approximately $1.00 per ton and upward. This plaintiff pays royalties upon some properties at the rate of 25 cents per ton or thereabouts, and the tax upon ore produced from such properties is higher because of the smaller deduction than upon ore produced from properties where a higher royalty is paid.

(*f*) Generally the operation of said act as a whole and of Section 2 thereof providing for the various deductions therein prescribed will result in inequality and lack of uniformity in the tax that would be levied and assessed thereunder.

10. Further the tax imposed by said Act as a property tax, is a tax upon property which has become the subject of interstate transportation. Said tax is not laid upon said ore if and when unmined, but is imposed upon said ore if and when the same is raised to the surface of the earth. The process of mining and transporting iron ore in Minnesota is practically a continuous and single process. In open pit mines said ore is dug from the earth by steam shovel and placed immediately in cars of an interstate common carrier awaiting the same in the open pit of said mine and by the same is brought to the surface of the earth. From said point the movement of said ore to the point where the cars are assembled into trains, from thence to the Lake Superior docks for delivery into vessels and by vessel to lower lake ports, is practically continous. The process in the case of underground mines is substantially the same, save that the ore is hoisted to the surface and there immediately at the surface dumped into the cars of the interstate common carrier at the shaft house or head-frame. This process is true of all the ore shipped, save as to a comparatively small tonnage thereof, which is temporarily placed in stockpile. All ore so mined and so transported is from the moment of its severance from the realty the subject of interstate transportation and interstate commerce, and a tax thereon is a direct interference into and burden upon interstate commerce and therefore in violation of Article 1, Section 8 of the Constitution of the United States, vesting in Congress the power to regulate commerce among the several states.

11. If the tax imposed or attempted to be imposed by said Act is not a property tax but is a tax upon the business and upon the mining and producing of iron ore then it is a direct interference with and a burden upon interstate commerce and therefore in violation of Article 1, Section 8 of the Constitution of the United States, vesting in Congress the power to regulate commerce among the several states.

Since the commencement of the iron mining industry in Minnesota, to the present time, substantially all, i. e. upwards
11 of 99% of the ore mined and produced in Minnesota has been sold and shipped to consumers in other states. During the calendar year 1921, of the total number of tons of iron ore mined and produced in Minnesota, to-wit: 17,442,419 tons, only 261,622 tons were sold and shipped to the two consumers who are the only consumers of iron ore within the State of Minnesota, and the remainder was sold and shipped to consumers in other states, and the consumption of iron ore in Minnesota for the year 1921 was limited to a small percentage of the total amount of ore produced in said state and upwards of 98 per cent of all the ore so mined and produced by this plaintiff and by all other operators in said state during said year, was and of necessity had to be sold to consumers in other states. The process of mining and transporting iron ore generally in Minnesota is practically continuous, said ore, except for a small tonnage thereof placed in stockpile and a relatively small tonnage which is washed and concentrated as an incident to its shipment out of the state, being mined by steam shovel in open pit mines or raised in shafts from underground mines and loaded by steam shovel, or from shaft houses directly into railroad cars, therein transported to the ports of Two Harbors or Duluth, Minnesota, or Superior, Wisconsin, there loaded directly into vessels and transported to the lower lake ports, where the same is delivered. By reason of the foregoing facts, it has been, is and will be in the future a matter of commercial necessity that practically all of the iron ore produced in Minnesota has been, is and will continue to be sent into interstate commerce.

This plaintiff, before the beginning of the season of 1921 during which iron ore was shipped, namely at or shortly after the beginning of the year 1921, entered into numerous contracts (there being a separate contract covering the estimated output of each of the mines in Minnesota which is operated) with consumers of ore having furnaces in states other than Minnesota, whereby it
12 agreed to mine, sell and deliver to said consumers f. o. b. vessels at specified ports on Lake Erie or Lake Michigan a stated number of tons of iron ore more or less from each of said mines. The quantity of ore stated in each contract was the estimated output of the mines covered by the contract for the year 1921, and it was the intention of the parties and the effect of the contract to cover all of the ore produced during said year from said mine. The ore produced by this plaintiff from the properties hereinbefore described was produced pursuant to said contracts. The process of mining and transporting iron ore pursuant to said contracts is the same as that in vogue generally in Minnesota as above described. Of the total tonnage of iron ore, to-wit: 12,408,305 tons, mined by this plaintiff from its various properties during 1921, only 261,622 tons or approximately 2% was delivered by this plaintiff within the state during said year, the same being sold and delivered to the Minnesota Steel Company at Duluth, Minnesota.

The course of business described above, pursued by this plaintiff

during the year 1921 has been and is the course uniformly pursued by this plaintiff and to be pursued in the year 1922 and in the future. By reason of the facts hereinabove alleged, the mining and producing of iron ore by this plaintiff and by all of the persons engaged therein in the State of Minnesota is a part and incident of interstate commerce, and the tax imposed or attempted to be imposed by said act is a direct interference with and burden upon interstate commerce as aforesaid.

12. If said act imposes a tax upon the occupation of mining and producing iron ore in the State of Minnesota, it violates the Fourteenth Amendment to the Constitution of the United States providing that no State shall deny to any person within its jurisdiction the equal protection of the laws, and violates Article IX, Section 1 of the Constitution of the State of Minnesota providing that taxes shall be uniform upon the same class of subjects by reason of the provisions of Section 2 of said act and of the facts alleged and
13 the matters pleaded in section 9 hereof in connection with the allegations that said tax violates said provisions as a tax upon property.

13. If said act is an act imposing a tax upon occupations it denies to this plaintiff the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States and violates the provisions of Section 1, Article 9 of the Constitution of the State of Minnesota in that it singles out unreasonably and arbitrarily the business of mining iron ore and other ores, and imposes a tax thereon alone, discriminating against said occupation and unreasonably excluding from its operation other like occupations such as the mining and quarrying of rock, the digging of sand and gravel and also the business of those persons who may be and who in fact are engaged in removing overburden from open pit mines upon the Missabe Range in Minnesota.

14. If the tax imposed by said act is not a property tax as hereinbefore alleged and is an occupation tax then the same is invalid for the reason that the Constitution of the State of Minnesota does not permit the imposition of any tax upon occupations as a subject of taxation.

15. If the tax imposed by said act is not a tax upon property as hereinbefore alleged and not a tax upon occupation then it is a tax upon the income of persons engaged in the production of iron or other ores and does not impose a tax upon the income of any other person or class of persons or income derived from any other source, and there is no other class of income taxed in any manner under the laws of Minnesota. The constitution of the State of Minnesota does not permit the imposition of a tax upon income of one person or of one class of persons or upon income from a single source to be selected by the Legislature for the purpose of taxation and does not permit the imposition of any income tax whatsoever.

14 16. Said act further violates the Fourteenth Amendment of the Constitution of the United States in that it deprives all persons, including this plaintiff, engaged in the business of mining or producing iron ore in the State of Minnesota of the equal protection of the laws and renders their property liable to be taken without due process of law, all in violation of the Fourteenth Amendment to the Constitution of the United States, in that the penalties fixed for the failure of said persons to make reports as provided in Section 3 of said Act and for failure to open for the inspection and examination of the Minnesota Tax Commission their books, waybills, inventories, correspondence and memoranda relating to or used in connection with their ownership or operation of a mine or mines in Minnesota and for failure to pay the tax imposed or sought to be imposed by said Act are so excessive as to intimidate, coerce and compel said persons, including this plaintiff, to comply with the provisions of said Act without the freedom of resorting to the courts to test the validity of the provisions of said Act. This defendant is informed and believes and on information and belief alleges that the defendants acting as the Minnesota Tax Commission intend and threaten to levy and assess a tax against this plaintiff or against said properties or against the iron ore mined and removed therefrom in a sum upwards of $1,000,000 for the year 1921; that a penalty of 10% thereon will amount to a sum upwards of $100,000; that a penalty of 1% per month or 12% per year will amount to a sum upwards of $10,000 per month or $120,000 per year, or upwards of $300 per day.

15 17. No provision is made in said Act for the refundment of any money paid as taxes pursuant to its provisions if it be finally found and determined that said Act is in fact unconstitutional and void, and there is no provision in the Statutes of Minnesota or at common law giving to this plaintiff or anyone the right or power to compel the State of Minnesota to refund money paid as taxes pursuant to said Act. The only way open to this plaintiff in a court of law to test the constitutionality or validity of said Act is to refuse to comply with said Act and to refuse to pay the taxes which said Act purports to impose and thereby expose itself to the danger of being liable for the excessive penalties provided in said act. Therefore this plaintiff has no plain, adequate and complete remedy at law.

18. If for the purpose of testing the constitutionality and validity of said Act, this plaintiff refuses and declines to make such report on or before February 1st, or to pay said tax or otherwise to comply with said Act, it and its officers and agents may be and as this plaintiff verily believes will be subjected to many suits brought by or on behalf of the State of Minnesota. The defendants constituting the Minnesota Tax Commission have, as hereinbefore alleged, required from this plaintiff separate reports from each mine operated, and if said defendants proceed to determine a tax with reference to each mine (except where the operation of such mine was conducted at a loss or so that no taxable value is arrived at under said Act) and

cause a draft to be drawn for the taxes so determined against each such mine, and said defendant Hilton, as Attorney General,
16 brings suit on each of said drafts, there will result a multiplicity of suits against this plaintiff. A criminal action may be brought against this plaintiff's officers and agents as aforesaid by reason of failure to open for inspection and examination to the Minnesota Tax Commission its books, waybills, inventories, correspondence and memoranda as provided in Section 13 of said Act, and actions may be brought against this plaintiff, in case it fails to pay the tax aforesaid for the year 1921 and for the succeeding years, for the collection of said tax as provided in said Act. Therefore this plaintiff, itself and through its officers and agents, will be subjected to a multiplicity of suits.

19. If the plaintiff is not granted immediate relief by this court of equity, defendants Lord, Armson and Halden, acting as the Minnesota Tax Commission, threaten to and will, as this plaintiff believes, require or attempt to require shortly after February 1, 1922, this plaintiff to open to said defendants for examination and inspection its books, waybills, inventories, correspondence and memoranda as provided in Section 13 of said Act, and if this plaintiff's agents or officers having control of such papers and books shall neglect and refuse, on demand of said defendants acting as the Minnesota Tax Commission, to permit such examination and inspection, they will be guilty of a gross misdemeanor and punishable therefor. Further, if, for the purpose of testing the constitutionality and validity of said Act, this plaintiff refuses to render the report required in Section 3 of said Act by February 1st, 1922, a penalty of ten per cent of the tax computed by the Minnesota Tax Commission will, under the provisions of Section 6 of said Act, be added to the tax. Therefore this plaintiff is threatened with immediate and irreparable injury.

20. By reason of all of the foregoing facts set forth in this bill of complaint this plaintiff is threatened with immediate and irreparable injury and a multiplicity of actions if this court of equity does not grant the relief herein prayed, and has and can have no plain, adequate and complete remedy at law.

17 Wherefore, this plaintiff prays this Honorable Court for a judgment and decree against the defendants and each of them as follows:

1. To grant to it and against the defendants and each of them, individually or in their representative capacities as officers of the State of Minnesota, temporary restraining order to be replaced by an interlocutory injunction to be granted by an enlarged court of three judges, pursuant to Section 263 of the Judicial Code of the United States, and that upon a final hearing, to be succeeded in turn by a permanent injunction restraining, enjoining and prohibiting said defendants, either as individuals or as representatives of the State of Minnesota, from acting under or in pursuance of or from in any way carrying out or enforcing the provisions of the Act of the

Legislature of the State of Minnesota, being Chapter 223 of the Laws of Minnesota for 1921 and entitled "An Act providing for the imposition of a tax upon persons, copartnerships, companies, joint stock companies, corporations and associations however organized, engaged in the business of mining or producing iron ore and other ores, for enforcing and collecting the same, and prescribing penalties for the violation thereof."

2. To grant to this plaintiff such other and further relief as this Honorable Court shall deem just and equitable.

C. A. SEVERANCE,
GEORGE M. MORGAN,
Solicitors for Plaintiff.

1512 Merchants National Bank Bldg., St. Paul, Minnesota.

DAVIS, SEVERANCE & MORGAN,
FRANK D. ADAMS,
ELMER F. BLU,
Of Counsel.

18 STATE OF MINNESOTA,
County of St. Louis, ss:

W. J. Olcott, being first duly sworn, deposes and says: That he is one of the officers, to wit: the President of the Oliver Iron Mining Company, the plaintiff in the above entitled action; that he has read the foregoing Bill of Complaint and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated upon information and belief, and as to those matters he believes it to be true.

W. J. OLCOTT.

Subscribed and sworn to before me this 21st day of January, 1922.

[Notarial Seal, St. Louis County, Minn.]

A. R. MORTON,
Notary Public, St. Louis County, Minnesota.

My Commission expires April 21, 1926.

Filed January 24, 1922.
JOEL N. DICKEY,
Clk.,
By J. C. HERMAN ENGEL,
Deputy.

Statement of Mines for Which Occupation Tax Reports for 1921 *Have Been Requested by Minnesota Tax Commission.*

Name of mine.	Description. Section.	Township.	Range.	Interest of Oliver Iron Mining Company.
Arcturus ..... S.W. ¼ of S. E. ¼	13	56	24	Operator under contract.
S. E. ¼ of S. E. ¼	"	"	"	
S. E. ¼ of S. W. ¼	"	"	"	
N. ½ of N. E. ¼	24	"	"	
N. E. ¼ of N.W. ¼	"	"	"	
Canisteo ..... S. ½ of N. E. ¼	30	56	24	Leasehold.
N. ½ of S. E. ¼	"	"	"	
S. ½ of S. E. ¼	"	"	"	
S. W. ¼ of S. W. ¼	29	"	"	
N. E. ¼ of N. E. ¼	31	"	"	
N.W. ¼ of N.W. ¼	32	"	"	
Holman ..... S.W. ¼ of N. E. ¼	21	56	24	Leasehold.
S. E. ½ of N. E. ¼	"	"	"	
S. ½ of N.W. ¼	22	"	"	
N. E. ¼ of S. W. ¼	"	"	"	
N. W. ¼ of S. E. ¼	"	"	"	
Judd ..... N.W. ¼ of N.W. ¼	21	56	24	Leasehold.
South Judd ..... S.W. ¼ of N.W. ¼	21	56	24	Leasehold.
Sweeney ..... S.W. ¼ of S.W. ½	3	57	21	Operator under contract.
S. E. ¼ of S. E. ¼	4	"	"	
Monroe ..... S. E. ¼ of N. E. ¼	28	58	20	Title in fee simple.
N. E. ¼ of S. E. ¼	"	"	"	
S. E. ¼ of S. E. ¼	"	"	"	

Statement of Mines.—Continued.

Name of mine.	Description.	Section.	Township.	Range.	Interest of Oliver Iron Mining Company.
Tener	N.W. ¼ of S. E. ¼	28	58	20	Leasehold.
Leonard-Burt	N. E. ¼ of S.W. ¼	28	58	20	Operator under contract.
South Myers	S.W. ¼ of S. E. ¼	22	58	20	Title in fee simple.
Carson Lake	N.W. ¼ of S. E. ¼	10	57	21	Leasehold.
Hull	N.W. ¼ of S.W. ¼	1	57	21	Operator under contract.
	S.W. ¼ of N. E. ¼	2	"	"	
	S. E. ¼ of N. E. ¼	"	"	"	
	N. E. ¼ of S. E. ¼	"	"	"	
Rust	S.W. ¼ of N. E. ¼	1	57	21	Operator under contract.
	S. E. ¼ of N. E. ¼	"	"	"	
	S.W. ¼ of N.W. ¼	"	"	"	
	S. E. ¼ of N.W. ¼	"	"	"	
	S. E. ¼ of N.W. ¼	2	"	"	
Philbin	E. ½ of S. E. ¼	6	57	20	Leasehold.
Hartley-Burt	N. E. ¼ of N. E. ¼	23	58	20	Operator under contract.
	N.W. ¼ of N. E. ¼	"	"	"	
20	N. E. ¼ of N.W. ¼	"	"	"	
	N.W. ¼ of N.W. ¼	24	"	"	
	S. E. ¼ of S. E. ¼	14	"	"	Leasehold.
Missabe Mt.	N. E. ¼ of N. E. ¼	8	58	17	Operator under contract
	S. E. ¼ of N. E. ¼	"	"	"	
	N.W. ¼ of N. E. ¼	"	"	"	
	S.W. ¼ of N. E. ¼	"	"	"	
Kerr	Lot 1 N. E. ¼ of N. E. ¼	3	57	21	Operator under contract.
	S. E. ¼ of S. E. ¼	34	58	21	
	S.W. ¼ of S.W. ¼	35	"	"	Leasehold.

	S. E. ¼ of S.W. ¼	"	"	"	Operator under contract.
Alpena	Lots 3 and 4	5	58	17	Operator under contract.
Sibley	S.W. ¼ of N.W. ¼	26	63	12	Leasehold.
	N.W. ¼ of S.W. ¼	"	"	"	
Pool	S. E. ¼	36	58	21	Operator under contract.
Burt	Lots 3 and 4	31	58	20	Operator under contract.
Day	E. ½ of S.W. ¼	31	58	20	Operator under contract.
Morris	N.W. ¼ of N. E. ¼	31	58	20	Operator under contract.
	S. E. ¼ of N. E. ¼	"	"	"	
	N. E. ¼ of S. E. ¼	"	"	"	
	S. E. ¼ of S. E. ¼	"	"	"	
	S.W. ¼ of N.W. ¼	32	"	"	
Winnifred	S.W. ¼ of N. E. ¼	31	"	"	Operator under contract.
	E. ½ of N.W. ¼	"	"	"	
Leonidas	E. ½	36	58	18	Operator under contract.
Glen	N. E. ¼ of S. E. ¼	29	58	20	Operator under contract.
	S. E. ¼ of N. E. ¼	"	"	"	
Clark	S. E. ¼ of N.W. ¼ (part of)	28	58	20	Operator under contract.
Hibbing Townsite	Lot 5 S.W. ¼ of N.W. ¼	6	57	20	Operator under contract.
	S. E. ¼ of N.W. ¼	"	"	"	
Sellers	Lot 3 N. E. ¼ of N.W. ¼	6	57	20	Operator under contract.
	Lot 4 N.W. ¼ of N.W. ¼	"	"	"	
Wellington	S. E. ¼ of S.W. ¼	28	58	20	Operator under contract.
Chisholm	W. ½ of N. E. ¼	28	58	20	Operator under contract.
Chester	N.W. ¼ of N.W. ¼	27	58	20	Operator under contract.
Duncan	S.W. ¼ of S.W. ¼	26	58	20	Operator under contract.
	S. E. ¼ of S. E. ¼	27	"	"	Operator under contract.
Fraser	N. ½ of S. E. ¼	23	58	20	Operator under contract.
Wanless	N. E. ¼ of S. E. ¼	16	58	19	Leasehold.

Name of mine.	Description. Section.	Township.	Range.	Interest of Oliver Iron Mining Company.
Shiras .....S. ½ of S.W. ¼.....	16	58	19	Operator under contract.
Spruce .....W. ½ of S. E. ¼.....	31	58	17	Operator under contract.
Cloquet .....S.W. ¼.....	31	58	17	Operator under contract.
N.W. ¼ of N.W. ¼.....	6	57	17	
Adams-Nelson 40 Lot 1 N.W. ¼ of N.W. ¼.....	31	58	17	Operator under contract.
Adams .....W. ½ of N. E. ¼.....	31	58	17	Operator under contract.
E. ½ of N.W. ¼.....	"	"	"	
Lot 2 S.W. ¼ of N.W. ¼.....	"	"	"	Operator under contract.
Minnewas .....W. ½.....	16	58	17	Operator under contract.
Genoa-Sparta-Townsite ...S.W. ¼ of N.W. ¼.....	34	58	17	Operator under contract.
N. E. ¼ of S.W. ¼.....	"	"	"	
S. ½ of S.W. ¼.....	"	"	"	Leasehold.
Lot 1 S. E. ¼ of S. E. ¼.....	"	"	"	
Lot 2 S.W. ¼ of S. E. ¼.....	"	"	"	
N.W. ¼ of S.W. ¼.....	"	"	"	Operator under contract.
Fayal #2 .....S.W. ¼ of N.W. ¼.....	5	57	17	Operator under contract.
S. ½ of N. E. ¼.....	6	"	"	
Fayal #1.....Lot 4 N.W. ¼ of N.W. ¼.....	5	"	"	Operator under contract.
Lot 1 N. E. ¼ of N. E. ¼.....	6	"	"	
Fayal #3 .....N. ½ of S.W. ¼.....	5	"	"	Operator under contract.
S. E. ¼ of S.W. ¼.....	"	"	"	
N.W. ¼ of S. E. ¼.....	"	"	"	
Soudan .....N. ½ of S.W. ¼.....	27	62	15	Operator under contract.
N.W. ¼ of S. E. ¼.....	"	"	"	
S. E. ¼ of N. E. ¼.....	28	"	"	
N. E. ¼ of S. E. ¼.....	"	"	"	
Pioneer .....S. W. ¼.....	27	63	12	Leasehold.

28 Endorsed: Filed January 24, 1922. Joel M. Dickey, Clerk, by J. C. Herman Engel, Deputy.

That on the 20th day of February, A. D. 1922, there was filed in the office of the Clerk of this Court the answer of the defendants to the Bill of Complaint of Oliver Iron Mining Company, which is in words and figures as follows, to-wit:

29 In the District Court of the United States, District of Minnesota, Fifth Division.

In Equity.

OLIVER IRON MINING COMPANY, Plaintiff,

vs.

SAMUEL LORD, JAMES G. ARMSON, and ODIN HALDEN, Constituting the Minnesota Tax Commission; Clifford L. Hilton, Attorney General of Minnesota; Raymond P. Chase, State Auditor of Minnesota, and Henry Rines, State Treasurer of Minnesota, Defendants.

Answer to Bill of Complaint.

The above named defendants for their joint and several answers to the bill of complaint of plaintiff in the above entitled cause, respectfully represent and state to the court as follows:

I.

The defendants admit the allegations of Paragraph 1, of said bill of complaint.

II.

Defendants admit the allegations of Paragraph 3, of said bill of complaint.

III.

Defendants admit that plaintiff in this suit seeks to enjoin said defendants from enforcing the provisions of a certain act of the legislature of the State of Minnesota, being Chapter 223, of the Laws of Minnesota for 1921, upon the ground of its un-
30 constitutionality.

Defendants admit that the taxes which plaintiff would be required to pay for the year 1921 under said act, exceed the sum of $3,000.00, and that the matter in dispute in this suit exceeds, exclusive of interests and costs, the sum of $3,000.00.

Defendants expressly deny that this is a suit properly brought in equity and expressly deny that any sufficient ground for equitable relief is stated or exists, and defendants deny that said act is

in violation of any provision of the constitution of the United States, or of the State of Minnesota.

IV.

Defendants admit the allegations of Paragraph 4, of said bill of complaint.

V.

Defendants admit the allegations of Paragraph 5, of said bill of complaint.

VI.

Defendants deny that said act, to-wit: Chapter 223, Laws 1921, is unconstitutional upon any of the grounds set forth in Paragraph 6 of the bill of complaint. Defendants admit that unless restrained they will enforce said law.

VII.

Defendants state that they have no knowledge as to the interest of the plaintiff in the properties described in Exhibit A, attached to the bill of complaint, but defendants believe that plaintiff's rights therein are correctly set forth in said Paragraph 7, of the bill of complaint, and defendants further believe that the plaintiff is the person who will be obliged to pay the tax arising out of the occupation of mining the properties described in said Exhibit A.

31 VIII.

Defendants deny all of the allegations of Paragraph 8, of the bill of complaint, except they admit that an ad valorem tax is imposed by the laws (Chap. 483, Laws 1913) of the state upon iron mines.

IX.

Defendants deny that said tax is a property tax or that it violates the fourteenth amendment to the Constitution of the United States, or that it violates Section 1, Article 9, of the Constitution of the State of Minnesota, in respect to any of the matters set forth in the various subdivisions of Paragraph 9 of the bill of complaint, but allege, on the contrary, that any difference in the cost of operating iron mines arises out of the circumstances and situation of the mine operators and their properties and that each and all of the provisions of said law therein referred to in respect to deductions from the cost of operating mines or otherwise are designed to and accomplish the purpose of imposing uniform and equal taxes upon all persons, copartnerships, joint stock companies and associations engaged in that business.

X.

Defendants repeat their denial that said law imposes a property tax. They deny that the process of mining and transporting ore is a continuous process and deny that plaintiff's iron ore is mined and transported as set forth in paragraph 10 of the bill of complaint. They allege that, except as to "wash ore" or so-called "low grade ore," the manner and method of delivering the same for transportation, and for transporting same is as follows:

32 The plaintiff has constructed and owns railway tracks running through and upon its open pit mines; that said plaintiff owns railway engines operated by its own employes; that the carrier operating the lines over which plaintiff's ore is to be shipped from said open pit mines, when called upon to do so by plaintiff, sets out on its side tracks for use of plaintiff such empty cars as plaintiff may require; that thereupon plaintiff, with its engines and through its employes, goes upon the sidings of such carrier and takes such empty cars into and upon such open pit mines, loads such cars with ore, and thereafter delivers them at such railway side tracks to such carrier with directions as to their movement and destination.

That ore from underground mines is brought to the surface, through shafts, in "skips," so-called, to the shaft house. During a part of the year the ore is deposited in pockets at the shaft house for loading into railway cars. During the remainder of the year the ore is carried from the shaft house to a stock pile, there to await later loading into cars. That nearly 50% of the ore mined is so deposited in stock piles. The shaft house is reached by side tracks owned by carriers, which tracks lie directly beneath the pockets. Plaintiff calls upon the carrier to furnish such cars as it may require and these cars are set out upon such side tracks and plaintiff's employes move such cars, usually one or two at a time, beneath the ore pockets, load such cars, assemble them when loaded, and notify carrier of their readiness for movement, and the carrier then takes such shipment to destination. Ore in stock pile is loaded by plaintiff by steam shovels into cars similarly assigned by the carrier, and moved, assembled, and delivered by plaintiff in substantially the same manner as are cars loaded from pockets.

That "wash ore" so-called, is taken from the mine, whether the same be an open pit mine or an underground mine, by plaintiff

33 through its employes, and upon its own cars drawn by its own locomotives, and is carried and transported over its own railway tracks to a washing plant or concentrating plant, distant from one to five miles from such mines; it is there beneficiated by plaintiff, that is, washed free of sand and other foreign substances, and thereafter such beneficiated ore, commonly called concentrates, is shipped by plaintiff to furnaces in its usual course of business.

Defendants deny that ore is the subject of interstate transportation from the time of its severance from the realty and deny that the tax imposed upon plaintiff interferes with or burdens commerce in viola-

tion of Article 1, Section 8, of the Constitution of the United States as alleged in Paragraph number 10 of the bill of complaint.

XI.

Defendants deny that such tax is a direct interference with or a burden upon interstate commerce. Defendants, although having no knowledge of the exact amount, admit that a very large percentage of the iron ore mined in Minnesota, after being mined, is, and for some time to come may be, shipped via the Great Lakes to so-called lower lake ports and there sold or delivered to furnace consumers.

Further answering the allegations of Paragraph 11, of the bill of complaint, the defendants reassert the allegations set forth in Paragraph 10, of this answer, which allegations relate to the manner of mining iron ore and the delivery thereof to the initial common carrier for transportation. Defendants state that they have no knowledge but believe to be true the allegations in Paragraph 11 of the bill of complaint relating to contracts covering the sale and delivery of the estimated output of each of plaintiff's mines in Minnesota.

XII.

The defendants deny that said legislative act of Minnesota
34 deprives the plaintiff of the equal protection of the law guaranteed under the Fourteenth Amendment to the Constitution of the United States. Defendants deny that said law offends against the requirement as to uniformity provided for in Section 1, Article 9, of the Constitution of the State of Minnesota, as alleged in Paragraph 12 of the bill of complaint.

XIII.

Defendants deny that the legislative act in question, by singling out the business of mining ore, makes an illegal classification in violation of the Fourteenth Amendment to the Constitution of the United States or of Section 1, Article 9, of the State Constitution, and defendants allege that there is in Minnesota no other occupation or business similar to or like the business of mining or producing iron ore or other ores.

XIV.

Defendants deny the allegations of Paragraph number 14 of the bill of complaint.

XV.

Defendants deny that the tax imposed by the act in question is an income tax and, on the contrary, they allege that it is the purpose and effect of said statute to impose a business or occupation tax upon plaintiff based upon the amount of ore produced, which tax is equalized and made uniform by basing the tax upon the value of the

ore produced and by allowing certain deductions therefrom, which deductions are principally designed to equalize the tax upon underground mining and the tax upon open pit mining. That mining or producing ore from an underground mine is widely different from mining or producing ore from an open pit mine. The ore in underground mines lies at a considerable depth below the surface of the earth; shafts are sunk to the ore bodies; tunnels or drifts are driven at different levels into the ore bodies and the ore thus reached is
35 separated and brought to the mouth of the shaft by manual labor. The amount of ore which may be extracted from an underground mine in a given time is restricted by the limitations of space and openings thus imposed. The ore in open pit mines lies near the surface of the earth; the over burden of the ore is stripped off the ore bodies and thereafter the operation is simply one of separating the ore by means of steam shovels and loading it into cars brought into the pit of the mines as hereinbefore described. The cost of producing a ton of ore from an underground mine greatly exceeds the cost of procuring a ton of ore of like quality from an open pit mine.

XVI.

Defendants deny that said act violates the "equal protection" or "due process of law" provisions of the Fourteenth Amendment to the Constitution of the United States and defendants deny that the penalties (prescribed by said act) are excessive or are such as to intimidate or coerce plaintiff as alleged in Paragraph 16 of the bill of complaint. Defendants further state that they have no knowledge or belief as to the amount of the tax which under said law will be imposed upon the plaintiff.

XVII.

Defendants deny that the plaintiff has no plain, adequate and complete remedy at law because of the penalties provided for in said act, and in that connection defendants allege that the prescribed penalties are not more severe than are ordinarily and usually provided for in taxation laws.

XVIII.

Defendants deny that if plaintiff, for the purpose of testing the constitutionality and validity of said act, refuses and neglects to comply with the requirements thereof, it and its officers and agents may be, or will be, subjected to many suits brought by or on behalf
36 of the state of Minnesota. Defendants admit that the Minnesota Tax Commission has requested this plaintiff as to each property being mined by it to file the report required by Section 3 of said act. Defendant Hilton as attorney general denies that he intends or proposes to bring separate actions against plaintiff on account of each of its mines, and alleges that said Chapter 223, Laws 1921, contemplates but a single action against plaintiff if it shall fail to pay taxes assessed against it thereunder, and defendant Attorney

General Hilton alleges that he will commence and prosecute against plaintiff only the single suit provided for in said act.

XIX.

Defendants admit the allegations of Paragraph 19, of the bill of complaint, except they expressly deny that the plaintiff is threatened with immediate and irreparable injury.

XX.

Defendants deny that the plaintiff is threatened with immediate and irreparable injury and a multiplicity of suits. They deny that the plaintiff has no plain, adequate and complete remedy at law as alleged in Paragraph 20 of the bill of complaint.

Having thus made a full answer to all the matters and things contained in the bill, the defendants pray that the bill be dismissed and for judgment for their costs in this behalf incurred.

CLIFFORD L. HILTON,
Attorney General;
EGBERT S. OAKLEY,
Deputy Attorney General;
MONTREVILLE J. BROWN,
Assistant Attorney General,
Solicitors for Defendants.

102 State Capitol, St. Paul, Minn.

37 STATE OF MINNESOTA,
County of Ramsey, ss:

Samuel Lord, being first duly sworn, says that he is one of the defendants named in the bill of complaint herein; that he has read the foregoing answer and knows the contents thereof and that the same is true of his own knowledge, except as to matters therein stated upon information and belief, and as to those matters he believes it to be true.

SAMUEL LORD.

Subscribed and sworn to before me February 18, 1922.
[SEAL.] G. E. SPANGENBERG,
Notary Public, Ramsey County, Minnesota.

My commission expires March 11, 1922.

Endorsed: Filed February 20, 1922. Joel M. Dickey, Clerk, by J. C. Herman Engel, Deputy.

That on the 2nd day of February, A. D. 1922, there was filed in the office of the Clerk of said Court, a Restraining Order, with the Marshal's return thereto attached, which is in the words and figures following, to-wit:

38 In the District Court of the United States, District of Minnesota, Fifth Division.

OLIVER IRON MINING COMPANY, Plaintiff,

vs.

SAMUEL LORD, JAMES G. ARMSON, and ODIN HALDEN, Constituting the Minnesota Tax Commission; Clifford L. Hilton, Attorney General of Minnesota; Raymond P. Chase, State Auditor of Minnesota, and Henry Rines, State Treasurer of Minnesota, Defendants.

Restraining Order.

The plaintiff having filed its verified Bill of Complaint herein, and having moved the Court to grant an interlocutory injunction, in accordance with the prayer in its said bill, and it having been made to appear by the averments of said bill that irreparable loss or damage will result to the plaintiff before the hearing of said application for said injunction can be had unless the defendants herein are, pending said hearing, enjoined and restrained as prayed for in said Bill of Complaint, and an order to show cause having been issued and served herein, citing the defendants to show cause why a restraining order should not be entered, which order to show cause was made returnable on the twenty-six day of January, 1922, at ten o'clock a. m., and all parties having appeared, pursuant to said order to show cause:

It is ordered that a temporary restraining order be and the same is hereby granted and that the defendants and each of them, either as individuals or as representatives of the State of Minnesota be, and they are hereby enjoined, restrained and prohibited, until the hearing and determination of said motion for an interlocutory injunction and until the further order of the Court herein, from acting under or in pursuance of or from in any way carrying out or enforcing the provisions of the Act of the Legislature of the State of Minnesota, being Chapter 223 of the Laws of Minnesota for 1921 and entitled "An Act providing for the imposition of a tax upon persons, copartnerships, companies, joint stock companies, corporations and associations however organized, engaged in the business of mining or producing iron ore and other ores, for enforcing and collecting the same, and prescribing penalties for the violation thereof."

Dated at Duluth, Minnesota, this 26th day of January, 1922.

PAGE MORRIS,
Judge.

39 *Return on Service of Writ.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order on the therein-named Henry Rines, treasurer of Minnesota, by

handing to and leaving a true and correct copy thereof with him and also by exhibiting to him the signature of Judge Morris appearing on Original Order personally at St. Paul in said district on the 27th day of January, A. D. 1922.

EDWARD RUSTAD,
U. S. Marshal,
By S. J. PICHA,
Deputy.

40 *Return on Service of Writ.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order on the therein-named Raymond P. Chase, state auditor of Minnesota, by handing to and leaving a true and correct copy thereof with Matthew J. Desmond, deputy auditor of Minnesota, and also by exhibiting to him the signature of Judge Morris appearing on Original Order personally at St. Paul in asid district on the 27th day of January, A. D. 1922.

EDWARD RUSTAD,
U. S. Marshal.
S. J. PICHA,
Deputy.

41 *Return on Service of Writ.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify that I served the annexed Restrainnig Order on the therein-named Clifford L. Hilton, attorney general of Minnesota, by handing to and leaving a true and correct copy thereof with E. S. Oakley, assistant attorney general of Minnesota, and also by exhibiting to him the signature of Judge Morris appearing on Original Order, personally at St. Paul in said district on the 27th day of January, A. D. 1922.

EDWARD RUSTAD,
U. S. Marshal,
By S. J. PICHA,
Deputy.

42 *Return on Service of Writ.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order on the therein-named Samuel Lord and J. G. Armson, members of the Minnesota Tax Commission, by handing to and leaving a true and correct copy thereof with N. A. Nelson, secretary of the

above named commission, and also exhibiting to him the signature of Judge Morris appearing on Original Order, personally at St. Paul, in said district on the 27th day of January, A. D. 1922.

EDWARD RUSTAD,
U. S. Marshal,
By S. J. PICHA,
Deputy.

Sam'l Lord in Washington, D. C.
J. G. Armson out of the city of St. Paul.

43 *Return on Service of Writ.*

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I hereby certify and return that I served the annexed Restraining Order on the therein-named Odin Halden, member of Minnesota Tax Commission: by handing to and leaving a true and correct copy thereof with Odin Halden, and also exhibited to him Judge Morris' signature on Original Order personally at Duluth in said district on the 28th day of January, A. D. 1922.

EDWARD RUSTAD,
U. S. Marshal,
By JAMES A. PEARCE,
Deputy.

Endorsed: Filed February 2, 1922. Joel M. Dickey, Clerk, by J. C. Herman Engel, Deputy.

That on the 4th day of May A. D. 1922, there was filed with the Clerk of this Court, a stipulation for hearing of this cause, which is in words and figures following, to-wit:

44 In the District Court of the United States, District of Minnesota, Fifth Division.

In Equity.

OLIVER IRON MINING COMPANY, Plaintiff,

vs.

SAMUEL LORD, JAMES G. ARMSON, and ODIN HALDEN, Constituting the Minnesota Tax Commission; Clifford L. Hilton, Attorney General of Minnesota; Raymond P. Chase, State Auditor of Minnesota, and Henry Rines, State Treasurer of Minnesota, Defendants.

Stipulation.

It is hereby stipulated by the parties hereto that the issues in the above entitled proceeding shall be heard and determined on the merits by Judge Tillman D. Johnson at St. Paul, Minnesota, on

April 24, 1922, at 10 o'clock A. M. or as soon thereafter as counsel can be heard; and that the restraining order heretofore issued herein shall remain in full force and effect pending said determination of the issues on the merits in lieu of an interlocutory injunction pursuant to the requirements of the Act of Congress relating thereto, the application therefor, hearing thereon and determination thereof by three judges being expressly hereby waived.

C. A. SEVERANCE,
GEORGE W. MORGAN,
Solicitors for Complainant.
CLIFFORD L. HILTON,
Attorney General.
EGBERT S. OAKLEY,
Deputy Attorney General.
PATRICK J. RYAN,
Attorneys for Defendants.

Let this stipulation be filed as of February 8, 1922.

Dated April 29, 1922.

TILLMAN D. JOHNSON,
Judge.

Filed May 4, 1922.

JOEL M. DICKEY,
Clk.,
By E. CATHERINE NEFF,
Deputy.

45 That on the 2nd day of August, A. D. 1922, there was filed with the Clerk of this Court, transcript of evidence, including agreed statement of facts, which is in words and figures following, to-wit:

46 United States District Court, District of Minnesota, Fifth Division.

BENNETT MINING COMPANY et al., Plaintiffs,

vs.

SAMUEL LORD et al., Defendants.

INTERSTATE IRON COMPANY et al., Plaintiffs,

vs.

SAMUEL LORD et al., Defendants.

OLIVER IRON MINING COMPANY, Plaintiff,

vs.

SAMUEL LORD et al., Defendants.

THE BIWABIK MINING COMPANY et al., Plaintiffs,

vs.

SAMUEL LORD et al., Defendants.

THE CLEVELAND-CLIFFS IRON COMPANY et al., Plaintiffs,

vs.

SAMUEL LORD et al., Defendants.

THE MESABA-CLIFFS IRON MINING COMPANY, Plaintiff,

vs.

SAMUEL LORD et al., Defendants.

REPUBLIC IRON & STEEL COMPANY et al., Plaintiffs,

vs.

SAMUEL LORD et al., Defendants.

47 *Statement of Evidence.*

The above entitled matters came regularly on for hearing in the Federal Building, City of St. Paul, State and District of Minnesota, on the 24th day of April, 1922, before the Honorable Tillman D. Johnson, Judge; Messrs. Washburn, Bailey & Mitchell appearing on behalf of the Bennett Mining Company, et al. and the Republic Iron & Steel Company, et al.; Messrs. Abbott, MacPherran, Gilbert & Doan appearing on behalf of the Interstate Iron Company, et al. and the Biwabic Mining Company, et al.; Messrs. C. A. Severance and George W. Morgan appearing on behalf of the Oliver Iron Mining Company; Mr. H. J. Grannis, appearing on behalf of The Cleveland-

Cliffs Iron Company, and The Mesaba-Cliffs Iron Mining Company; Messrs. Clifford L. Hilton, Egbert S. Oakley, Montreville J. Brown and Patrick J. Ryan appearing on behalf of the defendants;

Whereupon, the following proceedings were had, to-wit:

It was stipulated that the seven suits as above entitled might be consolidated for the purpose of trial and be submitted upon one record.

The following agreed statement of facts (designated as Exhibit A) was thereupon offered in evidence:

48 *Agreed Statement of Facts.*

For the purpose of the trial of the above entitled suits, it is hereby stipulated and agreed by and between the respective parties thereto that, subject to objections as to relevancy and materiality, the following facts may stand as admitted; that any party may intro-
49 duce evidence in the regular manner, upon the trial of these causes, relative to any matters properly within the issues covered by the pleadings, and not controverting the facts herein stipulated. Subject to such understanding, it is agreed as follows:

1. During the year 1921 there were upwards of 41 corporations engaged in mining or producing iron ore in the State of Minnesota and there were upwards of 83 mines operated in said State.

During the past five years there have been on the average each year, namely 1917 to 1921 inclusive, upwards of 60 operators so engaged and upwards of 129 mines so operated.

2. Iron ore which is mined and placed in stockpile is assessed as mined iron ore as of May 1st of each year that the same remains in stockpile. Practically all the ore so stored is shipped out during the same calendar year in which it is mined, but a small percentage thereof mined and stockpiled before May 1st in some years remains in storage May 1st of subsequent years and is thus subject to an ad valorem tax in more than one year.

3. There is a substantial difference in the operating costs of persons engaged in mining and the production of iron ore, due to the physical characteristics of and conditions surrounding different mines, and in some measure to the fact that some operators, including some of the plaintiffs in the above entitled causes, operate in a more efficient and economical manner than some other operators. The aim of each operator is to operate efficiently and economically and thereby make the greatest profit.

4. Some of the plaintiffs operate both open pit mines and underground mines as do other persons engaged in mining in Minnesota. Some operate solely open pit mines and others operate solely underground mines.

50 5. There is a substantial difference in the amount of expenditures per ton of ore allowed to be deducted by Chapter 223, Laws 1921, as between open pit mines on one hand and under-

ground mines on the other. The amount per ton of the expenditures so allowed as deductions is much greater in the case of the underground mines than in the case of the open pit mines. The amount of these deductions per ton also differs as between different open pit mines and as between different underground mines. The items of cost allowed as deductions by said act, both in the case of open pit mines and underground mines, were much lower in years past than they have been in recent years. Many mines now in operation were opened up and developed in years of lower cost, others were opened up and developed in recent years of higher cost.

The cost of stripping open pit mines has varied from approximately 25 cents to approximately 45 cents per cubic yard of material removed.

6. The proportion which the tonnage produced from a given mine in a given year bears to the total tonnage therein varies as between different properties. The tax rates upon which ad valorem taxes are levied vary greatly in the different localities where the mines of these plaintiffs and other operators are situated because of the difference in school and municipal taxes levied and the total taxable property within taxing districts. In one locality wherein mines are situated the rate in 1921 was as high as 146.3 mills on the dollar and in another was as low as 38.2 mills on the dollar.

7. Royalties paid by these plaintiffs, as well as others operating as lessees under mining leases, vary greatly and from 12½¢ per ton up to more than $1.25 per ton. The average royalty is ap-
51 proximately 41¢ per ton. Widely varying rates of royalty are paid upon ore of the same quality, chemical analyses cost of production and market value. In some measure the quantity and quality of ore in the mine to be leased and the manner in which it may be mined, whether by open pit methods or underground methods, have affected the amount of royalties to be paid and these factors in some degree account for the variation in royalties paid.

8. There are in existence in the State of Minnesota iron or mining leases on lands owned by the state and leased for mining purposes. The state does not itself operate any mines, but always leases its mines on a royalty basis and under provisions which require the lessee to pay ad valorem taxes thereon while the leases are in existence, and such lands are assessed for ad valorem taxes the same as similar lands not owned by the state. Of the proven merchantable ore in Minnesota, approximately one-tenth of the total is owned by the state in fee. Owners of ore lands other than the state have generally followed the same practice of leasing to others who operate, under leases requiring the lessee to pay ad valorem taxes. Usually there are six mines operated by persons who own the said mines wholly or in part. In 1921 none of said six mines were operated.

8*a*. In certain cases, if computations are made on the basis of Chapter 223 of the Laws of 1921, a given mine operated by a plaintiff would have shown a profit, requiring the payment of tax, in one year, while in another year, on account of the fluctuating demand

and value of the product, the same mine would have shown a substantial loss. The same result may be expected in the future.

9. In some open pit mines the over burden has been stripped to a depth of 150 feet, and the surface material has been necessarily hauled a distance of several miles to a suitable dumping ground. The cost has sometimes run above two million dollars. These stripping operations in respect to different mines have been carried out at different periods in the past. Thus some of the
52 mines of plaintiff's operating in 1921 expended the cost of removing the over burden twenty years ago, others removed a part of the over burden from year to year as mining progressed, still others have only in the past year caused such work to be done, and in the case of others the work still remains to be done.

In determining whether an investment shall be made in stripping a mine or in sinking shafts or any development work in connection therewith, it is customary for the operator to consider the interest value of such investment, and in calculating mining profits he figures a reasonable rate of interest upon such original investment as reduced from time to time as the ore is mined and spreads the interest charge over the tonnage and the property during the life of the mine. The life of some mines, mined out in equal annual installments, will exceed forty years.

10. In certain cases a plaintiff operates several mines and makes an ultimate profit on the entire operation of some and sustains an ultimate loss on the entire operation of others, and this may be expected to happen in the future.

11. The process of mining and transporting iron ore by these plaintiffs and generally in Minnesota, is as follows: In case of open pit mines the mining company constructs (with rails which it owns or leases from the railroad company) and from time to time as necessary, shifts and reconstructs railway tracks in its open pit mines which connect at the *at the* mouth of said mine or pit with the tracks owned and maintained by the Railway Company. The mining companies own or rent and themselves operate by their own employees locomotives in the open pits and operate steam shovels therein. The railway company operating the lines over which the mining company ore is to be shipped from said open pit mines, maintains upon supply tracks or at so-called assembly yards at a varying distance from said mines but as close to the same as convenience will permit, a large supply of cars of a specially con-
53 structed type peculiarly adapted for the loading of ore into the same, transporting such ore, and thereafter dumping the same into docks. From these tracks or yards such empty cars are hauled in strings or train lots by the mining company's engine to the open pit where the same are spotted at various steam shovels working in the pit; steam shovels dig the ore and lift the same immediately into the cars of the railway company; when the same are loaded they are moved from the pit by the mining company's engine and delivered upon the nearby tracks or assembly yards of the railway

company, where the same are immediately made into trains and moved by the railway company to docks at Two Harbors, or Duluth, Minnesota, or Superior, Wisconsin, as the case may be, except (as hereinafter more specifically stated) in the case of wash-ore and of ore desined to one of the two consumers of iron ore in Minnesota located at Duluth, Minnesota.

12. Directions as to requirements for cars, the requisition thereof by the mining company at the supply track or assembly yard of the railway company when the same are needed for movement to the open pit and instructions as to destination of the ore are as follows: The mining company having determined the volume of tonnage to be shipped to the docks makes a request on the railway company's yardmaster in each district in the afternoon of each day for its requirements of empty ore cars needed for pit loading for the next 24 hours; the yardmaster immediately places an order with the train dispatcher of the railway company for the empty cars to arrive at the railway company's yards near the mine at a given time in order to insure a supply of such cars. Upon arrival the cars are placed in the said railway company's yards and from there taken to the pit by the mining company's locomotives. When such cars are loaded the same are returned by the mining company to the railway company's yards, and billing covering each car to the ore docks is furnished by the mining company. As soon as cars are loaded the mining company takes samples of ore in each car, which
54 samples are analyzed in the mining company's laboratory, such analyses determining to which group or block such ore belongs, and this information is given to the railway company before the train reaches the docks so that the ore can be classified and the cars made into groups in accordance with analysis and such groups dumped into separate ore pockets in the docks, and from thence loaded into boats accordingly.

13. All of said ore, with the exception of ore moving to washing plants and of ore destined to the two consumers of iron ore in Minnesota located at Duluth, is consigned to ore docks at Two Harbors, Duluth or Superior, as the case may be, intended for immediate shipment to Lower Lake ports. Such ore is forthwith carried by the railway company to the docks owned by said company at said ports of Two Harbors, Duluth or Superior, and is there dumped from the cars into pockets upon the docks, and thence shortly by gravity into vessels engaged by shippers, by which the same is transported to the Lower Lake port of destination, from whence it is immediately or eventually transported to furnaces located for the most part in the states of Indiana, Ohio, Illinois and Pennsylvania, and there employed in the process of manufacture. All ore transported to docks at Two Harbors or Duluth moves from the docks via the lakes to points outside of Minnesota.

Copies of all of the tariffs applicable to iron ore in carloads from the various mines to Two Harbors and Duluth in effect during 1921, marked Exhibit I, consisting of 9 tariffs, are hereto attached and made a part of this stipulation. Similar tariffs were in effect prior to

1921 and are now in effect. Tariffs in effect in 1921, published during the period of Federal control, were none of them filed with the Minnesota Railroad and Warehouse Commission or given a
55 number by that Commission; but previous to and subsequent to Federal control tariffs similar to D. & I. R., G. F. D. 272, I. C. C. No. 266; D. & I. R., G. F. D. 280, I. C. C. No. 274, and D. M. & N., G. F. D. 917-F, I. C. C. No. 307, were filed with the Minnesota Railroad and Warehouse Commission, as well as with the Interstate Commerce Commission. The other tariffs were at all times filed only with the Interstate Commerce Commission.

14. In the case of underground mines the ore is customarily brought to the surface through shafts in so-called "skips" and at the surface unless stockpiled, dumped from said skips into pockets at the shaft house from which the same is loaded into railway cars for immediate transportation. The shaft house is reached by side tracks or spur tracks which are owned by carriers and lie directly beneath the pockets. The mining company calls upon the carrier to furnish such cars as it may require each day and these cars are set out usually in strings upon such side tracks or spurs. In most cases the mining company's employes move such cars by the aid of gravity,
56 usually one at a time, beneath the ore pockets and when loaded run them past the pockets and assemble them in strings and notify the carrier of their readiness for movement. In other cases the spotting of such cars for loading at shafts and the assembling of them when loaded is done by the carrier with its own engine. During the period of the railroad administration a special tariff charge was made for such engine service at shaft houses or stockpiles, and prior thereto and subsequent to March 1921 such service had been covered by the general transportation charge of the carrier. The carrier likewise moves cars to the stockpile with its own engine, spots the same for loading at such stockpile and moves all loaded cars both from shaft and stockpile out from such side or spur track to its assembly yards in the same manner as above described in the case of open pit mines. All loading of ore is done by the mining company.

15. None of the ore produced from open pit mines is stored or placed in stockpile save in an exceptional case and a small tonnage of material sometimes known as lean ore of no market value, which is dumped on adjoining or nearby lands. Some of the ore produced from underground mines during winter time when lake navigation is closed, usually during the months of December to March inclusive of each year, is placed in stockpile. In 1921 54.55% of ore mined from underground mines, being 14.66% of all ore mined in Minnesota, was so placed in stockpile. Ordinarily not more than 40.76% of the ore mined in Minnesota in a given year in underground mines, being approximately 11.71% of all ore mined in Minnesota, is so stockpiled. Practically all of the tonnage so placed in stockpile is shipped therefrom during the shipping season next succeeding the time when the same was mined.

16. Wash ore so-called is ore which required treatment by washing and concentration in order to prepare it for market. In
57 the case of some of the plaintiffs it is taken from the mine by the mining company upon its own cars, drawn by its own locomotive or locomotives rented from the railway company over its own tracks to a washing plant or concentrating plant located at varying distances from such mine.

In the case of the plaintiff, Oliver Iron Mining Company, said wash ore mined as above from the Arcturus Mine, is taken by the railroad carrier from its yards at the mouth of the open pit mine, moved over the carrier's tracks by the carrier's own engine and crew to the carrier's yards near the concentrating plant of said mining company under a regularly published tariff charge of said carrier for such service. The mining company's engine and crew take the ore at this point and haul it the balance of the distance to the concentrating plant largely over the mining company's tracks.

In the case of the wash-ore from the Canistec and Holman groups of mines the ore is taken by the said Oliver Iron Mining Company, with its own locomotives and crews, from the open pits to the concentrating plant, all of this being done over tracks owned entirely by the mining company.

The mining companies concentrate said ore by washing, and after said treatment said ore is at once loaded upon the carrier's cars and shipped to the furnaces by rail and vessel in the manner above described in the usual course of business.

The ore concentrated or beneficiated as thus described in Minnesota in 1921 amounted to 3,095,776 tons concentrates or 17.04% of all ore mined. During the last five years it has on the average amounted to 4,371,489 tons per year, or 11.97% of all ore mined.

17. Since the commencement of iron mining industry in Minnesota to the present time upwards of 99% of all ore mined and produced has been sold and shipped to consumers in other states.
58 During the calendar year 1921 the total tons of iron ore mined and produced in Minnesota was 18,167,370 tons. 261,622 tons were sold and shipped to Minnesota Steel Company at Duluth, Minnesota, which was the only company consuming iron ore within the state of Minnesota during said year. The remainder of said tonnage as stated was sold and shipped to consumers in other states in the manner above set forth. The only other consumer of iron ore in the State of Minnesota up to the present time has been the Zenith Furnace Company at Duluth, Minnesota, which, however, was not operating during the year 1921. The average requirements of iron ore per annum during the past six years of these two consumers in Minnesota has been the Zenith Company 129,473 tons, the Minnesota Steel Company, whose operations commenced in December, 1915, 526,052 tons, constituting less than 1.8% of the average annual shipments of iron ore from Minnesota during said six year period which were 38,083,493 tons. The total tonnage of iron ore produced by the plaintiff Oliver Iron Mining Company during the year 1921 in Minnesota was 12,247,682 tons and it sold and deliv-

ered to the Minnesota Steel Company all of the aforesaid tonnage used by said company.

All of the plaintiffs during the year 1921, with the foregoing exception of certain tonnage shipped by the Oliver Iron Mining Company to the Minnesota Steel Company, and most of the plaintiffs during previous years, shipped all of the ore shipped by them, to points outside of the State of Minnesota.

18. It is commonly the case that before the plaintiffs and others commence a season's mining, they contract with parties at lower lake ports to sell all, or substantially all, the ore to be mined during the given season, for delivery at such lower lake ports or at furnaces in other states. It is not uncommon that contracts are made for such delivery at lower lake ports covering a large part of the output of a given mine for several years in advance.

59 19. There is a marked difference between open pit mining and underground mining of iron ore, in the following particulars, among others:

In the case of open pit mines, when the surface has been removed, ore cars can be brought directly into and upon the ore bodies and the ore itself is excavated and transferred directly to the cars by steam shovels, and is then transported to lake ports, as hereinbefore described. The ore thus exposed is sometimes of uneven quality and grade and there may be in it layers or strata of foreign material which must be eliminated, but generally speaking, the operation is simply one of the use of steam shovels in loading ore upon cars.

In the case of underground mines, shafts are sunk into ore bodies and tunnels or drifts are constructed through the ore. Miners enter these tunnels or drifts and detach the ore. The ore is then moved to the bottom of the shaft and from there hoisted to the surface in skips, so-called, loaded into pockets at the shaft house, and from thence into cars for transportation, as hereinbefore described. The underground mining requires the employment of large numbers of miners, and, as in all other familiar mining operations, requires pumping, ventilation and timbering of the underground openings. The quantity of ore which may be taken from an underground mine is restricted by the limitations of space imposed by the confinement of operations to tunnels, drifts and shafts. In open pit mining such restrictions are obviously absent.

The operating cost per ton of extracting ore from an underground mine is very much greater than the operating cost per ton of extracting ore of a like grade and quality from an open pit mine. On the other hand, the cost of stripping a mine is usually very much greater than the cost of sinking a shaft into a like ore body which is to be mined by underground methods.

While the difference in methods between open pit and underground mining is clear and well defined as a general proposition, it is likewise true that the entire cost of mining and exhaust-
60 ing ore from an open pit mine under unfavorable conditions will approach in some cases, but only in rare cases, if at all,

No supplement to this tariff will be issued except for the purpose of cancelling the tariff.

I. C. C. No. 264
Cancels C. C. No. 255.

D. & I. R., G. F. D. No. 270
Cancels G. F. D. No. 262.

The Duluth & Iron Range Rail Road Co.

LOCAL FREIGHT TARIFF

——APPLYING ON——

IRON ORE

(In Carload Lots)

MINIMUM WEIGHT: 31 GROSS TONS PER CAR.

Where such transportation forms a part of the carriage of such Ore to a point or points outside of the State of Minnesota:

TO	FROM	PER GROSS TON of 2,240 Pounds.
ENDION STATION Duluth, Minn.	Virginia ..... Minn. Eveleth ..... " Sparta ..... " Pettit ..... " McKinley ..... " Biwabik ..... " Aurora ..... " Colby ..... " Mesaba ..... " Tower Junction..... " Semer ..... " Ely ..... " Winton ..... "	$1.00

RECONSIGNMENT—Shipments moving under this Tariff will be entitled to reconsignment privilege as contained in D. & I. R., I. C. C. No. 228. G. F. D. No. 223, supplements thereto or reissues thereof.

The rate named herein includes assembling at originating points.

ASSUMPTION OF CONNECTING LINES SWITCHING: On shipments moving under this tariff this company will assume connecting lines switch at Duluth, Minn., as provided in D. & I. R., I. C. C. No. 228, G. F. D. No. 223, supplements thereto or reissues thereof.

Issued June 20, 1918. **Effective June 25, 1918.**

The rates made effective by this schedule are initiated by the President of the United States through the Director General, United States Railroad Administration, and apply to Interstate traffic only. This schedule is published and filed on one day's notice with the Interstate Commerce Commission under General Order No. 28 of the Director General, United States Railroad Administration, dated May 25, 1918, and amended June 12, 1918.

Issued by

H. JOHNSON,

General Freight Agent.

Duluth, Minn.

No supplement to this tariff will be issued except for the purpose of cancelling the tariff.

I. C. C. No. 266

D. & I. R., G. F. D. No. 272
Cancels G. F. D. Nos. 264 and 266.

The Duluth & Iron Range Rail Road Co.

LOCAL FREIGHT TARIFF

—APPLYING ON—

IRON ORE

(IN CARLOAD LOTS)

MINIMUM WEIGHT: 31 Gross Tons per Car, except Wood Gondola Cars, 60,000 pounds.

Where such transportation does not form a part of the carriage of such Ore to a point or points outside of the State of Minnesota:

TO	FROM	PER GROSS TON of 2,240 Pounds
ENDION STATION Duluth, Minn.	Virginia ..... Minn. Eveleth ..... " Sparta ..... " Pettit ..... " McKinley ..... " Biwabik ..... " Aurora ..... " Colby ..... " Mesaba ..... " Tower Junction..... " Semer ..... " Sulphur ..... " Ely ..... " Winton ..... "	$1.00

RECONSIGNMENT—Shipments moving under this Tariff will be entitled to reconsignment privilege as contained in D. & I. R., I. C. C. No. 228, G. F. D. No. 223, supplements thereto or reissues thereof.

The rate named herein includes assembling at originating points.

ABSORPTION OF CONNECTING LINES SWITCHING: On shipments moving under this tariff this company will absorb switching charge of the Northern Pacific Railway to connection with the Zenith Terminal Railway on shipments for the Zenith Furnace Company and will absorb switching charge of the Northern Pacific Railway to Missabe Junction (D., M. & N. connection) and D., M. & N. switching charge to Steelton to make delivery to the Minnesota Steel Company, as per tariffs lawfully on file with the Interstate Commerce Commission.

Issued June 20, 1918. **Effective June 25, 1918.**

The rates made effective by this schedule are initiated by the President of the United States through the Director General, United States Railroad Administration, and apply to Intrastate traffic only. This schedule is published and filed on one day's notice with the Interstate Commerce Commission under General Order No. 28 of the Director General, United States Railroad Administration, dated May 25, 1918, and amended June 12, 1918.

Issued by

H. JOHNSON,
General Freight Agent.

Duluth, Minn.

200. M&H.

No supplement to this tariff will be issued except for the purpose of cancelling the tariff.

I. C. C. No. 273.
Cancels I. C. C. No. 265

G. F. D. No. 279
Cancels No. 271

UNITED STATES RAILROAD ADMINISTRATION
DIRECTOR GENERAL OF RAILROADS

Duluth & Iron Range Railroad

LOCAL FREIGHT TARIFF

Stamp Here Date Received

—OF—

PROPORTIONAL RATES

—APPLYING ON—

IRON ORE, CARLOADS

Minimum Weight 31 tons of 2,240 pounds per car

—FROM—

Aurora, Minn.	Ely, Minn.	Mesaba, Minn.	Sparta, Minn.
Biwabik, Minn.	Eveleth, Minn.	Pettit, Minn.	Tower Jct., Minn.
Colby, Minn.	McKinley, Minn.	Semer, Minn.	Virginia, Minn.
			Winton, Minn.

—TO—

TWO HARBORS, MINN. (ORE DOCKS)

When destined to points beyond the Ore Docks and without the State of Minnesota (via lake), and when such transportation forms a part of the carriage of such ore to a point or points without the State of Minnesota (via lake).

The rate named herein includes assembling at originating points, weighing and sorting.

RATE:—95 Cents Per Gross Ton of 2240 Pounds,

Plus storage, dockage and handling charges as follows:

FOR		
Storage in cars at dock yards, unloading from cars to docks, storage in docks and loading from docks to vessels.	If loaded into vessel within ten days from arrival of cars at dock yards.	5c per gross ton of 2240 lbs.
♦When not loaded into vessel within ten (10) days, a storage charge (same will not be made during the closed season of lake navigation, i. e. the interval between departure of the last vessel and arrival of the first vessel.)	For each day or fraction thereof after the first ten days.	½c per ton of 2240 lbs. per day or fraction thereof.

By authority of Rule 77, Interstate Commerce Commission Tariff Circular No. 18-A, this tariff is not made applicable from all intermediate points. Upon reasonable request therefor, rates which will not exceed those in effect from more distant points will, under authority granted by the Interstate Commerce Commission, be established from any intermediate point hereunder upon one day's notice to the Commission and to the public.

ISSUED FEBRUARY 10, 1919. **EFFECTIVE MARCH 15, 1919**

Published for the Director General of Railroads and filed on 30 day's notice with the Interstate Commerce Commission, under Freight Rate Authority No. 3733, of the Director, Division of Traffic, United States Railroad Administration, dated Jan. 8, 1919.

H. JOHNSON,
GENERAL FREIGHT AGENT.
DULUTH, MINN.

♦Indicates an advance

No supplement to this tariff will be issued except for the purpose of cancelling the tariff.

I. C. C. No. 274.
Cancels I. C. C. No. 267

G. F. D. No. 280
Cancels No. 273

UNITED STATES RAILROAD ADMINISTRATION
DIRECTOR GENERAL OF RAILROADS

Duluth & Iron Range Railroad

LOCAL FREIGHT TARIFF

Stamp Here Date Received

—OF—

PROPORTIONAL RATES

—APPLYING ON—

IRON ORE, CARLOADS

Minimum Weight 31 tons of 2,240 pounds per car

—FROM—

Aurora, Minn.	Ely, Minn.	Mesaba, Minn.	Sparta, Minn.
Biwabik, Minn.	Eveleth, Minn.	Pettit, Minn.	Tower Jct., Minn.
Colby, Minn.	McKinley, Minn.	Semer, Minn.	Virginia, Minn.
			Winton, Minn.

—TO—

TWO HARBORS, MINN. (ORE DOCKS)

When destined to points beyond the Ore Docks and within the State of Minnesota (via lake), and when such transportation does not form a part of the carriage of such ore to a point or points without the State of Minnesota (via lake).

The rate named herein includes assembling at originating points, weighing and sorting.

RATE:—95 Cents Per Gross Ton of 2240 Pounds,

Plus storage, dockage and handling charges as follows:

FOR Storage in cars at dock yards, unloading from cars to docks, storage in docks and loading from docks to vessels.	If loaded into vessel within ten days from arrival of cars at dock yards.	5c per gross ton of 2240 lbs.
♦When not loaded into vessel within ten (10) days, a storage charge (same will not be made during the closed season of lake navigation, i. e. the interval between departure of the last vessel and arrival of the first vessel.)	For each day or fraction thereof after the first ten days.	¼c per ton of 2240 lbs. per day or fraction thereof.

By authority of Rule 77, Interstate Commerce Commission Tariff Circular No. 18-A, this tariff is not made applicable from all intermediate points. Upon reasonable request therefor, rates which will not exceed those in effect from more distant points will, under authority granted by the Interstate Commerce Commission, be established from any intermediate point hereunder upon one day's notice to the Commission and to the public.

ISSUED FEBRUARY 10, 1919. **EFFECTIVE MARCH 15, 1919**

Published for the Director General of Railroads and filed on 30 day's notice with the Interstate Commerce Commission, under Freight Rate Authority No. 3733, of the Director, Division of Traffic, United States Railroad Administration, dated Jan. 8, 1919.

H. JOHNSON,
GENERAL FREIGHT AGENT.
DULUTH, MINN.

♦Indicates an advance

No supplement to this tariff will be issued except for the purpose of cancelling the tariff.

I. C. C. No. 308
Cancels I. C. C. No. 264

D. & I. R., G. F. D. No. 308
Cancels G. F. D. No. 270

The Duluth and Iron Range Rail Road Company

LOCAL FREIGHT TARIFF

—APPLYING ON—

IRON ORE

(In Carload Lots)

MINIMUM WEIGHT: 31 GROSS TONS PER CAR

Where such transportation forms a part of the carriage of such Ore to a point or points outside of the State of Minnesota:

TO	FROM	PER GROSS TON of 2,240 Pounds
ENDION STATION Duluth, Minn.	East Virginia ..... Minn. Virginia ..... " Eveleth ..... " Sparta ..... " Pettit ..... " McKinley ..... " Biwabik ..... " Aurora ..... " Colby ..... " Mesaba ..... " Tower Junction ..... " Semer ..... " Ely ..... " Winton ..... "	$1.00

The rate named herein includes assembling at originating points.

‡COMBINATION RATES ON CONTINUOUS THROUGH MOVEMENT WHERE NO THROUGH RATES ARE IN EFFECT.

Rates on Iron Ore are subject to the rules for constructing combination rates as published in Agent W. J. Kelly's Freight Tariff No. 228, I. C. C. No. U. S. 1, (D. & I. R., G. F. D. No. 1372) Supplements thereto or reissues thereof).

RECONSIGNMENT

Shipments moving under this Tariff will be entitled to reconsignment privilege as contained in D. & I. R., I. C. C. No. 258, G. F. D. No. 268, Supplements thereto or reissues thereof.

ASSUMPTION OF CONNECTING LINES SWITCHING

On shipments moving under this tariff this company will assume connecting lines switch at Duluth, Minn., as provided in D. & I. R., I. C. C. No. 296, G. F. D. No. 301 Supplements thereto or reissues thereof.

RULE 77

By authority of Rule 77, Interstate Commerce Commission Tariff Circular No. 18-A, this tariff is not made applicable from all intermediate points. Upon reasonable request therefor, rates which will not exceed those in effect from more distant points will, under authority granted by the Interstate Commerce Commission, be established from any intermediate point hereunder upon one day's notice to the Commission and to the Public.

ISSUED JANUARY 19, 1921 **EFFECTIVE FEBRUARY 22, 1921**

Issued by
H. JOHNSON,
General Freight Agent

Duluth, Minn.

‡Reduction.

206. M&H.

No supplement to this tariff will be issued except for the purpose of cancelling the tariff.

I. C. C. No. 307.

Inter-State

G. F. D. No. 917-F
Cancels No. 917-E

From Missabe Range Points to Duluth and Steelton, Minn.

Duluth, Missabe & Northern Railway Co.

LOCAL FREIGHT TARIFF

—ON—

IRON ORE, CARLOADS

Minimum Weight, 31 gross tons per car.

—FROM—

Arcturus, Minn.
Biwabik, Minn.
Chisholm, Minn.
Coleraine, Minn.
Eveleth, Minn.
Hibbing, Minn.
Marble, Minn.
Mountain Iron, Minn.
Sharon, Minn.
Shenango, Minn.
Sparta, Minn.
Taconite, Minn.
Virginia, Minn.

—TO—

DULUTH AND STEELTON, MINNESOTA.

Where such transportation does not form a part of the carriage of such ore to a point or points outside of the State of Minnesota.

The rate named herein includes assembling at originating points.

♦Rate: One Dollar ($1.00) Per Gross Ton (2240 Lbs.)

ISSUED JUNE 20, 1918.

EFFECTIVE JUNE 25, 1918

The rates made effective by this schedule are initiated by the President of the United States through the Director General, United States Railroad Administration and apply to intrastate traffic only. This schedule is published and filed on one day's notice with the Interstate Commerce Commission under General Order No. 28, of the Director General, United States Administration, dated May 25, 1918 and amended June 12, 1918.

Issued by

J. B. HANSON,
GENERAL FREIGHT AGENT
DULUTH, MINN.

C. W. KIESWETTER,
ASSISTANT GENERAL FREIGHT AGENT,
DULUTH, MINN.

♦Indicates an advance.

No supplement to this tariff will be issued except for the purpose of cancelling the tariff.

I. C. C. No. 352.
Cancels I. C. C. No. 350

G. F. D. No. 915-G
Cancels No. 915-F

UNITED STATES RAILROAD ADMINSTRATION
DIRECTOR GENERAL OF RAILROADS

Duluth, Missabe & Northern Railroad.

LOCAL FREIGHT TARIFF

Stamp Here Date Received

—OF—

Interstate via Lake

PROPORTIONAL RATES

—APPLYING ON—

IRON ORE, CARLOADS

Minimum Weight { in wooden cars 17 gross tons / in steel cars 31 gross tons

—FROM—

Arcturus, Minn.	Eveleth, Minn.	Pettit, Minn.	Taconite, Minn.
Biwabik, Minn.	Hibbing, Minn.	Sharon, Minn.	Virginia, Minn.
Chisholm, Minn.	Marble, Minn.	Shenango, Minn.	
Coleraine, Minn.	Mountain Iron, Minn.	Sparta, Minn.	

—TO—

DULUTH, MINN. (ORE DOCKS)

When destined to points beyond the Ore Docks and without the State of Minnesota (via lake), and when such transportation forms a part of the carriage of such ore to a point or points without the State of Minnesota (via lake).

The rate named herein includes assembling at originating points, weighing and sorting.

RATE:—95 Cents Per Gross Ton of 2240 Pounds,

Plus storage, dockage and handling charges as follows:

FOR		
Storage in cars at dock yards, unloading from cars to docks, storage in docks and loading from docks to vessels.	If loaded into vessel within ten days from arrival of cars at dock yards.	5c per gross ton of 2240 lb.
ϕWhen not loaded into vessel within ten (10) days, a storage charge (same will not be made during the closed season of lake navigation, i. e. the interval between departure of the last vessel and arrival of the first vessel.)	For each day or fraction thereof after the first ten days.	¼c per ton of 2240 lbs. per day or fraction thereof.

By authority of Rule 77, Interstate Commerce Commission Tariff Circular No. 18-A, this tariff is not made applicable from all intermediate points. Upon reasonable request therefor, rates which will not exceed those in effect from more distant points will, under authority granted by the Interstate Commerce Commission, be established from any intermediate point hereunder upon one day's notice to the Commission and to the public.

ISSUED FEBRUARY 10, 1919. **EFFECTIVE MARCH 15, 1919**

Published for the Director General of Railroads and filed on 30-day's notice with the Interstate Commerce Commission, under Freight Rate Authority No. 3733, of the Director, Division of Traffic, United States Railroad Administration, dated January 8, 1919.

C. W. KIESWETTER,
GENERAL FREIGHT AGENT.
DULUTH, MINN.

ϕIndicates an advance

Sta. File A-8

Alky. No. 69

Iron Ore, Missabe Range Points to Duluth Ore Docks Interstate (915-G).

200

No supplement to this tariff will be issued except for the purpose of cancelling the tariff.

I. C. C. No. 353
Cancels I. C. C. No. 343

G. F. D. No. 916-G
Cancels No. 916-F

UNITED STATES RAILROAD ADMINISTRATION
DIRECTOR GENERAL OF RAILROADS

Duluth, Missabe & Northern Railroad.

Stamp Here Date Received

LOCAL FREIGHT TARIFF

—OF— Interstate via rail

PROPORTIONAL RATES

—APPLYING ON—

IRON ORE, CARLOADS

Minimum Weight { in wooden cars 17 gross tons / in steel cars 31 gross tons

—FROM—

Arcturus, Minn.	Eveleth, Minn.	♦Pettit, Minn.	Taconite, Minn.
Biwabik, Minn.	Hibbing, Minn.	Sharon, Minn.	Virginia, Minn.
Chisholm, Minn.	Marble, Minn.	Shenango, Minn.	
Coleraine, Minn.	Mountain Iron, Minn.	Sparta, Minn.	

—TO—

MISSABE JUNCTION, (Duluth) MINN.

When such transportation forms a part of the carriage of such ore to a point or points without the State of Minnesota.

The rate named herein includes assembling at originating points.

RATE: One Dollar ($1.00) Per Gross Ton (2240 Lbs.)

COMBINATION RATES ON CONTINUOUS THROUGH MOVEMENT WHERE NO THROUGH RATES IN EFFECT.
(Reissued from Special Supplement No. 1 to I. C. C. No. 343.)

Rates on Ore are subject to the rules for constructing combination rates as published in Agent Eugene Morris' Freight Tariff No. 228, I. C. C. No. U. S. 1 (D. M. & N., G. F. D. 1426) supplements thereto or reissues thereof (Authy. 71).

RULE 77

By authority of Rule 77, Interstate Commerce Commission Tariff Circular No. 18-A, this tariff is not made applicable from all intermediate points. Upon reasonable request therefor, rates which will not exceed those in effect from more distant point will, under authority granted by the Interstate Commerce Commission, be established from any intermediate point hereunder upon one day's notice to the Commission and to the public.

ISSUED MARCH 15, 1919. **EFFECTIVE APRIL 17, 1919**

Issued under authority of Rule 77 of Interstate Commerce Commission Tariff Circular 18-A. The rate from Pettit, Minn., hereby reduced appears in D. M. & N. R. R. I. C. C. No. 340 (Class D) and the rate from Biwabik, Minn., the more distant point appears in D. M. & N. R. R. I. C. C. No. 343.

Published for the Director General of Railroads under authority of Section 2 of Circular 1-B of the Director, Division of Tariff, United States Railroad Administration dated Feb. 1, 1919.

C. W. KIESWETTER
GENERAL FREIGHT AGENT.
DULUTH, MINN.

♦ Indicates a reduction

Sta File A-4.

Authy. No. 70

200

Iron Ore, C. L., Range Points to Missabe Jct., Proportional (916-G).

No supplement to this tariff will be issued except for the purpose of cancelling the tariff.

I. C. C. No. 358

G. F. D. No. 1447 Interstate via Lake

Joint with Great Northern Railway

UNITED STATES RAILROAD ADMINISTRATION
DIRECTOR GENERAL OF RAILROADS

Duluth, Missabe & Northern Railroad.

IN CONNECTION WITH

GREAT NORTHERN RAILROAD

(Appointment Notice No. 3)

Stamp Here Date Received

JOINT FREIGHT TARIFF

—OF—

PROPORTIONAL RATES

—APPLYING ON—

IRON ORE, CARLOADS

Minimum Weight { in wooden cars 17 gross tons / in steel cars 31 gross tons

—FROM—

PETTIT, MINN.

—TO—

ALLOUEZ DOCK, WIS.

(When for points beyond via Lake)

ROUTE VIA SAUNDERS, WIS.

The rate named herein includes assembling at originating points, weighing and sorting.

4RATE:—95 Cents Per Gross Ton of 2240 Pounds,

Plus storage, dockage and handling charges as follows:

FOR		
Storage in cars at dock yards, unloading from cars to docks, storage in docks and loading from docks to vessels.	If loaded into vessel within ten days from arrival of cars at dock yards.	5c per gross ton of 2240 lbs.
When not loaded into vessel within ten (10) days, a storage charge (same will not be made during the closed season of lake navigation, i. e. the interval between departure of the last vessel and arrival of the first vessel).	For each day or fraction thereof after the first ten days.	¼c per ton 2240 lbs. per day or fraction thereof

By authority of Rule 77, Interstate Commerce Commission Tariff Circular No. 18-A, this tariff is not made applicable from all intermediate points. Upon reasonable request therefor, rates which will not exceed those in effect from more distant points will, under authority granted by the Interstate Commerce Commission, be established from any intermediate point hereunder upon one day's notice to the Commission and to the public.

ISSUED JUNE 3, 1919. **EFFECTIVE JULY 7, 1919**

Published for the Director General of Railroads and filed on 30-day's notice with the Interstate Commerce commission, under Freight Rate Authority No. 3733, of the Director, Division of Traffic, United States Railroad Administration, dated January 8, 1919.

C. W. KIESWETTER
GENERAL FREIGHT AGENT.
DULUTH, MINN.

4 Indicates a reduction

Sta File A-4.

Atty. No. 70

equal the entire cost of mining and exhausting ore from an underground mine under favorable conditions.

Certain of the plaintiffs operate certain mines so that both open pit and underground mining is carried on concurrently at the same mine.

20. The occupations of quarrying granite, marble, sandstone limestone and other rock, digging sand and gravel, clay and peat, ditching, grading, excavation of earth, rock and other materials for basements and foundations, and in other than mining operations the blasting of rock, hardpan and other materials, are carried on in the State of Minnesota in the manner usual and customary to said occupations.

Five corporations customarily are, and during the year 1921 four corporations were, either as independent contractors for the owners of property or as subcontractors to persons mining and removing iron ore, engaged in removing the so-called overburden of surface soil, taconite and other material from iron ore deposits in so-called open pit or stripping mines, who are not engaged themselves in the ultimate detachment and removal of iron ore from the ground. The removal of such overburden is a necessary part and incident of mining and producing such iron ore. Such work of stripping or removing the overburden is conducted by steam shovels in a manner generally similar to the removal of the iron ore itself in the case of open pit mines.

Five corporations customarily are, and during the year 1921 four corporations were, either as independent contractors or as subcontractors, engaged in mining ore by steam shovel in the open pits and loading it on cars, for the owners or lessees of the properties, usually doing said work at so much per ton of the ore so mined by steam shovel and loaded on cars.

61 21. The form of mining lease under which those plaintiffs who are lessees operate and which are generally in effect in Minnesota, contain clauses providing for the cancellation thereof by the lessee upon short time notice (from thirty days to six months). Such leases run for fixed periods, usually from thirty to fifty years and not indefinitely until the exhaustion of the ore deposit. In the past a few leasehold terms have expired and in the future a few may expire before the tonnage in the property covered by the lease is exhausted.

(Here follows reproduction of local freight tariff, marked pages 62-70, inclusive.)

71 Plaintiffs then offered the following:

Exhibit B, consisting of Chapters 5 and 6 of the Report of the Minnesota Taxation to the Governor and the Legislature of the State of Minnesota, dated December 30, 1920;

Exhibit C, consisting of a copy of the inaugural message of Governor J. A. O. Preus to the Legislature of Minnesota, dated January 5, 1921;

Exhibit D, consisting of seven documents attached together as a collective exhibit, being bills relating to taxation of ores and royalties introduced in the 1921 session of the Legislature of the State of Minnesota;

Exhibit E, being a copy of the House File, 23, a bill introduced in the special session of the Legislature of Minnesota in 1919;

Exhibit F, being the message of Governor J. A. A. Burnquist, dated September 19, 1919, vetoing said House Bill No. 23.

All of the foregoing were agreed to be true and correct copies of the originals but were objected to by solicitors for the defendants upon the ground that the same were incompetent, irrelevant and immaterial and were received in evidence by the Court subject to the objections.

It was stipulated and agreed that the iron ore produced in Minnesota in 1921 and ordinarily in each year comprises upwards of two-thirds of all the iron ore produced in the United States and the major part of all the iron ore consumed in the United States.

It was stipulated and agreed that where an underground mine is not in operation for a period there is usually a heavy expense for pumping and keeping it dry to prevent deterioration.

72 It was stipulated and agreed that the Oliver Iron Mining Company before the beginning of the season of 1921 during which iron ore was shipped, namely at or shortly after the beginning of the year 1921, entered into numerous contracts (there being a separate contract covering the estimated output of each of the mines in Minnsota which it operated) with consumers of ore having furnaces in states other than Minnesota, whereby it agreed to mine, sell and deliver to said consumers, f. o. b. vessels at specified ports on Lake Erie or Lake Michigan a stated number of tons of iron ore more or less from each of said mines. The quantity of ore stated in each contract was the estimated output of the mines covered by the contract for the year 1921, and it was the intention of the parties and the effect of the contract to cover all of the ore produced during said year from said mine. The ore produced by this plaintiff from the properties hereinbefore described was produced pursuant to said contracts. The process of mining and transporting iron ore pursuant to said contracts is the same as that in vogue generally in Minnesota. The course of business described above, pursued by this plaintiff during the year 1921 has been and is the course uniformly pursued by this plaintiff and to be pursued in the year 1922 and in the future.

A like stipulation was made as to The Biwabik Mining Company, Inland Steel Company, Orwell Iron Company, Dean Iron Company, Interstate Iron Company and Leetonia Mining Company.

As to the plaintiff Mesaba-Cliffs Iron Mining Company, all ore mined by said plaintiff is under contract for delivery to furnaces located at points outside of the state before the same is mined and as to all of the plaintiffs in the suit of the Republic Iron & Steel Company, et al., and Bennett Mining Company, et al. Substantially all of the ore mined by the said plaintiffs is under contract for
73 delivery to furnaces located at points outside of said state before the same is mined; and in case of the plaintiff Cleveland-Cliffs Iron Mining Co. with the exception of a small quantity of ore from time to time sold to purchasers outside of the state of Minnesota after the ore is mined all the iron ore mined by said Company in Minnesota is sold and under contract for delivery to points outside of said state before the same is mined.

EDWARD J. MANEY, general manager of the iron mining department of the Shenango Furnace Company, testified that the Company operated five mines in Minnesota, all of them being held under leases under which the royalties paid by the Shenango Company were either twenty-five cents or less per ton with one exception, that of a leasehold of the Virginia mine just acquired. Practically all underground mining in Minnesota is carried on under what is known as the contract system, that is, a certain group of miners take a contract to mine the ore at so much per ton, the price averaging about forty-five cents per ton and running from thirty to seventy cents per ton. The costs specified in Subdivision 3 of Section 2 of Chapter 223 in the operation of underground mines would vary from $1.50 to $3. per ton. On cross-examination the witness stated that the practice of the company is not to compensate miners employed underground on a per diem basis but on a tonnage basis. They work for the company in the same sense that a contractor works for the company. Four men constitute a crew. They look over a certain piece of ground and agree to mine it for so much money per ton. Their contracts are finished every thirty days and they are paid the amount of money they earn on those contracts. They are allotted the work the same as you would allot work to any contractor. These men will come around looking for contract work and they are taken underground, they go and look over the situation and conclude what price they ought to get for their
74 work and they agree with the mining captain whether that price might be fair or not and go to work accordingly. There is a mining superintendent in direct charge of the mine. The mining captain usually makes his headquarters in the mine's changing house for an hour or half an hour before the shift goes on. Men looking for work go to him, they find out if they have any contracts to offer and if so a representative of the four men will look the work over and if the price is satisfactry to the mining captain he gets the contract. One of the four miners acts as spokes-

man for the group. The system is to divide the contract into equal shares, and the settlement day comes and each miner receives a check for his shares. The superintendent through the mining captains and shift bos-es directs the miners where to work and how their work is to be done. There is nothing to prevent one of the groups from quitting, but if one does quit the leader is required to get another man to fill his place and the substitute is paid in the same manner as the one who has left. No individual miners are employed. The laborers other than miners are employed in and about the mine. The contract price per ton varies with the character of the ground and the working conditions, and the miners buy their own explosives and supplies. Prices agreed upon remain fixed until the work agreed upon is completed.

WILLIAM P. CHINN, general manager of the iron mining department of the Balkan Mining Company, Bennett Mining Company, and Corsica Iron Company, the Crete Mining Company, the Hoyt Mining Company and other companies, testified that contracts are made by mining companies generally on the Iron Range with other companies for the loading by steam shovel in the open pit mines of iron ore, that the price per ton prevailing for loading ore under contract in open pits by steam shovel depended largely
75 on the physical condition of the pit and varied from ten to thirty-five cents per ton, that these prices have generally prevailed for years past; that the lower cost would cover direct loading of ore into railroad cars and the higher price would mean the movement of low grade material to get out the better grade of ore and would mean probably sorting and switching around to get out ore suitable to make the grades. That in all cases the price would cover the work of lifting the ore from its natural beds and placing it in railroad cars in the pit. On cross-examination Mr. Chinn said that the contractor provides the equipment, including steam shovels and locomotives for doing the work and that it is the practice of the contractors to go out into railroad yards and bring in empties, load them and haul them back to the railroad assembling yards. Upon redirect examination Mr. Chinn testified that A. Guthrie & Company, Butler Brothers and Winston-Dear Company are engaged generally in doing this contract work and that A. Guthrie & Company and Winston-Dear Company do not own any mines themselves or leases upon them and are simply engaged in doing such contract work. That such work is done on a large scale with extensive equipment running into hundreds of thousands of dollars. That Corsica Iron Company has no property under lease which carries a higher royalty than twenty-five cents per ton.

Plaintiff's Ex. B

The Tonnage Tax
and
The Net Profit Tax on Iron Ore

BEING CHAPTER V OF THE
SEVENTH BIENNIAL REPORT

OF THE

Minnesota Tax Commission

1920
ST. PAUL, MINNESOTA

77

CHAPTER V

THE TONNAGE TAX AND THE NET PROFIT TAX ON IRON ORE

The present known merchantable iron ores of Minnesota are found in three separate ranges, the Vermilion, the Mesabi and the Cuyuna, located in Lake, St. Louis, Itasca, and Crow Wing counties. The Vermilion deposits are found in layers, varying in thickness from 10 feet to over 125 feet, and stand at an angle of about 45 degrees. The Mesabi deposits are found in horizontal basins of varying thickness and at different depths, much of which can be mined by open pit methods. The ore on the Cuyuna Range lies in nearly perpendicular veins of varying thickness and irregular outline, and presents many mining difficulties not encountered on the other ranges.

While iron ore was known to exist in Minnesota as early as 1850, it was not until 1865 that the first important discovery was made, when the Soudan mine was located at Tower on the Vermilion range. The initial shipment, however, was not made until 1884, nearly 20 years after discovery. Since that date, and up to the beginning of the present year, 43,179,510 tons of ore have been shipped from this range, with a remaining known tonnage on May 1, 1920, of 10,356,004 tons of merchantable ore.

The immense deposit of the Mesabi Range first attracted attention in the early nineties, when several deposits of rich hematite ores were discovered. They were so different, however, from anything that had theretofore been found in the Lake Superior region that at first serious doubt was felt as to their commercial value. The smelters objected to the ore because of its structure, but in a comparatively short time they adjusted themselves to its use, and since that time 520,686,631 tons of ore have been shipped from this range. Notwithstanding these large shipments, there was a remaining measured tonnage on May 1 of the present year of 1,306,135,590 tons of merchantable iron ore on the Mesabi Range.

The first shipments of iron ore in commercial quantities from the Cuyuna Range were made in 1911. Since that time, and up to the beginning of the present year, a total of 11,658,847 tons of ore have been shipped from this range. While the measured tonnage of merchantable ore on the Cuyuna Range was slightly less than

25,000,000 tons on May 1 of the present year, the range contains a great many million tons of ores that are not now merchantable but in time will undoubtedly be of considerable commercial value.

The Taxation of Iron Ore

The state began to give special attention to the taxation of iron ore three years before the first shipment was made from the Vermilion Range. By Chapter 54, Laws of 1881, extra session, a tax of one cent per ton was imposed on all iron ore mined in the state. This tax was in lieu of all other "taxes and assessments" on mining property, the law apparently being designed to encourage the development of mining industry in the state.

The output or tonnage tax remained in force until 1897, when it was repealed by Chapter 40, Laws of 1897, following an opinion rendered the previous year by the attorney general that the law was unconstitutional. Since that time iron ore in this state, both mined and unmined, has been assessed and taxed on the ad valorem basis.

Prior to 1914 the laws of the state required all property to be assessed and taxed at its true and full value. This law, however, had never been observed or enforced by assessing officials. Instead, the practice of assessing property at a percentage of full value had become so universal throughout the state as to have almost the force of law, and, in a measure, to receive legislative sanction, for practically all of our revenue laws were based on the assessment of property at less than its full value.

By Chapter 483, Laws of 1913, effective January 1, 1914, property was divided into four classes for purposes of taxation, each class being subject to assessment and taxation at a different percentage of true and full value. Iron ore, whether mined or unmined, constitutes Class 1 and is subject to taxation at 50 per cent of its true and full value. This is the highest percentage applied to any of the four classes, Class II being subject to taxation at 25 per cent, Class III at 33⅓ per cent, and Class IV at 40 per cent of true and full value.

In the earlier years of the application of the ad valorem tax method to iron ores, no serious attempt was made to adopt any scientific rule of valuation. No reports of tonnages, and mining or other cost data were required from mining companies, and hence no reliable information was available upon which such properties could be even approximately valued for purposes of taxation. As a consequence, the assessment of iron ore in those early days was largely

a matter of guess, or of compromise between assessing officials and mine owners and operators.

Among other subjects that first engaged the attention of the tax commission when it was organized in 1907, was that of some method of measuring the taxable value of real property other than mere guess, or arbitrary opinion, or the revenue needs of a community, methods that had so long prevailed throughout the state in the assessment of all kinds of property. After careful investigation and study of the subject, it was decided that the selling price of property not only fairly represented its taxable value, but at the same time was in harmony with the law which provides that the price for which property sells at private sale shall be taken as the "true and full" value of such property for purposes of taxation, hence the adoption by the tax commission of the "sales method" of determining the taxable value of all real property.

But it was found that sales of fee title to ore properties were not sufficiently numerous to justify their use as a measure of the taxable value of such properties. The leasing, rather than the absolute sale of ore properties, was the method most generally followed in the ore belt. As a consequence; the tax commission was obliged to adopt a rule other than that of the sales method for the valuation of ore properties. It was finally decided that the selling price of ores at Lake Erie docks, less the cost of mining and shipping the same, fairly determined the present values of such ores in the ground. As it would be manifestly impossible to mine and ship all of the ore deposits in a single year or in a dozen years, it became necessary, in order to ascertain the present value of the future worth of such ores, to apply a percentage discount to present values extending over the expected life of the mines, the latter being based on measured tonnages and average expected annual shipments.

This, in brief, is the method followed by the tax commission in valuing iron ore in the ground for purposes of taxation. It may be aptly described as the net profit method of ascertaining the taxable value of iron ore deposits. The tax, of course, is applied to the value thus ascertained, and not directly to the profits. But in effect it is similar to a net profit tax, because under this method, in the final analysis, profits determine the values upon which the ad valorem tax is levied.

While it is not claimed that the net profit method, as here briefly described, is a perfect measure of the present taxable value of our iron ore deposits, we believe it does measure such value as fairly and as accurately as it is possible to measure the value of any com-

modity, a part of which will not be placed on the market for an indefinite number of years in the future. Measured by this method, we believe the present known tonnages of iron ore are today valued and assessed as accurately and as closely to legal requirements as that of any other class of real property in this state.

The immediate effect of the adoption by the tax commission in 1907 of the net profit method of appraising mineral properties resulted in an assessed valuation of $191,706,682 in that year, as compared with $64,486,409 in 1906, an increase of nearly 200 per cent in a single year. The taxable value of ore tonnages this year is $297,383,065. Since 1907 and up to the present year, due to new tonnages disclosed through additional drillings, and to more accurate information as to grades and values, we have been enabled to show an increase in taxable values each year over the preceding year, with the exception of the years 1908 and 1919, when slight decreases were shown, the former being due to a readjustment of values rather crudely arrived at in 1907, and the latter due in part to a lessening of explorations because of conditions resulting from the war.

Since the organization of the tax commission in 1907, and up to and including the present year, there has been levied in taxes on mines and mineral property for state purposes only, a total of $15,553,808 out of a total state tax levy of $88,951,675 on all taxable real and personal property in the state. In other words, during this period mining property has paid a little over 17½ per cent on all state taxes.

In addition to revenues derived from the direct ad valorem tax on iron ore, the state also receives a large amount of revenue annually from indirect taxes on the mining industry. All railroads operating in the state are required to pay into the state treasury 5 per cent of their gross earnings in lieu of other taxes. The freight rate on iron ore at the present time from the mines to the Duluth and Superior harbors is $1.00 per ton. On estimated shipments of 39,500,000 tons of ore this year the state will receive, in addition to direct taxes, $1,975,000 in indirect taxes on that part of the gross earnings of railroads derived from ore shipments.

In addition to both direct and indirect taxes, the state receives a considerable revenue annually in the form of royalties on ore shipped from state-owned mines, the estimate for this year being $1,475,000. The receipts from royalties, however, are credited to certain trust funds, and are not available for current state expenses. Up to June 30th of the present year the different trust funds have

been credited with total receipts of $8,757,079 from state royalties on iron ore and from mineral leases.

It should not be understood that because taxable values have shown a consistent increase from year to year in the past, such increases will continue for an indefinite number of years in the future. The time must and will come when all of the iron ores of the state now considered merchantable will be disclosed by drillings, and when that time comes, no further annual increase in taxable values may be expected, because of decreasing tonnages due to shipments. Based on present measured tonnages of merchantable ores, shipments in the next thirty-five or forty years may exhaust the present supply. But millions of tons of merchantable ores may yet be disclosed by new drillings, and millions of tons of ore not now regarded as merchantable may be made commercially valuable by some new process of treatment or beneficiation, thus extending the exhaustion period almost indefinitely.

Taxation of Mines and Minerals in Other States

While the ad valorem system of taxing minerals is in general use in other states, there is considerable diversity in the method of valuing such property. In a number of the more important mineral states net profits are used as the principal measure of value, but the tax is imposed on the value measured by the profit, and not on the profit itself.

Michigan, which ranks next to Minnesota in the production of iron ore, uses the ad valorem system of taxation and measures values by the net profit method, using practically the same factors as are used in Minnesota. Perhaps it would not be inappropriate to say in passing that, while Michigan claims to be the pioneer in the net profit method of valuing iron mines, the method was in use in this state for four years before it was adopted in Michigan.

Alabama, ranking third in iron ore production, also uses the ad valorem system of mineral taxation, the tax being levied on a taxable value of about 60 per cent of full value. Apparently, however, no definite rule or measure of value has been adopted, assessing officials depending on such evidence as they may be able to obtain as to the value of each mine.

In addition to the ad valorem tax on mineral property, Alabama, under a law passed in 1919, also imposes a state license or privilege tax of 3 cents per ton on persons and corporations engaged in mining iron ore, the tax being computed on the tonnage mined each month.

Both New York and Wisconsin tax iron ore on the ad valorem

basis and at the same rates as other property is taxed. In addition to the general property tax, New York imposes a corporation tax of 4½ per cent on the net income of mining and other corporations.

In Pennsylvania, mineral property is taxed in the same manner as other property. Corporations engaged in mining, as in other industrial activities, are subject to an additional tax of 5 mills on the amount of their capital stock invested in business in the state.

An effort was made some years ago by the legislature to levy a tax of 2½ per cent on the market value of all anthracite coal mined in the state, but the law was declared unconstitutional.

Illinois and West Virginia tax coal and other minerals on the ad valorem basis, and at the same rate of taxation as other property. The laws of both states require full value assessments.

Indiana and Ohio also apply the ad valorem method of taxation to minerals, coal being the principal mineral production of both states.

Virginia taxes coal, its principal mineral product, on the ad valorem basis at prevailing local rates. In addition, there is a state tax of 85 cents on each $100 of the capital of mining companies, while local districts may levy a tax not exceeding 30 cents on each $100 of capital. Under the laws of that state all property used in mining which is not taxed as real property is taxed as capital. There is also a state income tax of 1 per cent on the first $3,000 of taxable income, and 2 per cent on taxable income in excess of $3,000.

Arizona applies the ad valorem method of taxation to mines. The system used in the valuation of productive mines is based on net production over a period of five years. Mines are classified with reference to their probable life, the longer lived mines being allowed an earning of 15 per cent, and the shorter as high as 30 per cent on the amount used for taxation purposes. Mines pay a little over one-half of all state taxes.

California also uses the ad valorem system of taxing mines and mineral properties. In arriving at the value of mines the net profit method is used by assessing officials. The net is arrived at by taking the gross income of each individual property and deducting therefrom actual production costs, and the value of the property is then taken to be one and a quarter times the net.

Montana has recently enacted a classified assessment law, patterned largely after the Minnesota law. Mines are taxable at full value, such value being determined by the net proceeds method. In arriving at net proceeds, deductions are allowed under the law for all money expended for necessary labor, machinery and sup-

plies used in mining operations; for necessary improvements in and about the working of the mine; for reducing the ores; for the construction of mills and reduction works, and for transporting and extracting the ore. Only money invested in the mines or improvements during the year immediately preceding the report can be included in expenditures, and no deduction is allowed for salaries of persons or officers not actually engaged in working, superintending or managing the mine.

Montana is one of the two states in which the net proceeds system of measuring the taxable value of mines is fixed by law.

New Mexico classifies mines and mineral lands as productive and non-productive. Productive mines are defined to be such as are mined in good faith for the mineral value thereof, with a fair degree of continuity throughout the year and on a scale reasonably commensurate with the opportunity and difficulty of disposing of the product thereof. All other mines and mineral lands are classed as non-productive. Both classes are taxed on the ad valorem basis at the same rate as other property is taxed, the taxable value of the former being determined by the state tax commission on the net value method as outlined by law, and the latter by local assessing officials on the best information obtainable.

The New Mexico mining law defines "net value" to be the difference between the actual cost of production, transportation, treatment, shipment and sale of mineral, and the amount realized from the sale of such mineral, or which could have been realized had the same been sold at the time of making the report, but not less, however, in either event, than the true market value of the mineral.

New Mexico is the other one of the two states in which the net value method of measuring the taxable value of minerals is fixed and outlined by law.

Two states, Oklahoma and Texas, impose a tax on the gross value of oil produced, the former at 3 per cent and the latter at 1½ per cent.

Utah taxes all mines and mining claims as real property on the basis of the price paid the United States for the same, plus any value they may have for other than mining purposes. The net annual proceeds are also taxed as personal property at the same rate as other property in the state is taxed.

Colorado uses a combination of gross and net proceeds in valuing mines for purposes of taxation. Mines are classified as producing and non-producing, the former being defined as mines having a gross annual production in excess of $5,000. In valuing productive mines

assessing officials are required to determine both gross and net proceeds. The assessment is made at a sum equal to one-quarter of the gross proceeds, or at a sum equal to the net proceeds if the latter exceed one-quarter of gross proceeds.

The foregoing brief summary of the laws of other states relating to mineral taxation necessarily omits many details of such laws as to the methods of imposing the tax, as well as to the collection and distribution of the tax. It will be noted that while the net profit method of measuring value is used in a number of states, with the exception of Montana, no state included in the list uses any higher percentage of taxable value for mineral than for other property. Nor does any state in the list impose a double tax on minerals, unless the license or privilege tax of 3 cents per ton imposed on the output of persons or corporations engaged in mining iron in Alabama be regarded as a double tax. While New York imposes a tax of 4½ per cent on the net income of corporations engaged in mining, the tax is also imposed on the net income of other industrial corporations, so it cannot be regarded as a double tax on mineral production, because it applies alike to the production of all industrial corporations.

Arguments For and Against a Super-tax

The principal arguments used by the proponents of a super-tax on iron ore may be summarized as follows:

Iron ore being a product of nature, its presence in the ground not being the result of the expenditure of capital or labor, is a natural heritage of all the people, and as such, the people are justified in appropriating to their use, in some form of taxation, some considerable part of the value arising from its exploitation.

That it does not reproduce itself, therefore its value is diminished by use through depletion, and that because of this diminishing value it should bear a heavier tax than other forms of natural property not diminished by use.

That under existing conditions the bulk of this great natural heritage is gradually being removed from the state to enrich other states, and that eventually its value as a taxable state asset will have disappeared through depletion due to shipments, and in its place will be found only valueless "holes in the ground," and that for this reason the state is justified in exacting a heavy toll in the form of a super-tax for the depletion and disappearance of its natural wealth.

That a super-tax on profits will insure the state a fairly uniform amount of public revenue annually from mine taxation during the life of mining in the state, while, if it depends on ad valorem taxes only, the receipts therefrom will soon begin to decline, and will reach the vanishing point within a generation.

In answer to these arguments the opponents of a super-tax contend:

That the natural heritage theory has no greater force in its application to iron ore than to other forms of natural wealth.

That if the state has a natural heritage in iron ore, it also has a natural heritage in its quarries, its forests, and its fertile agricultural lands.

That if one form of natural wealth should bear a super-tax because of the heritage theory, then all forms of natural wealth should be subjected to the same tax.

That admitting for the purpose of the point that the heritage argument has some force, it is a heritage of the nation, and not simply a heritage of the people of Minnesota, for the people of this state had no more to do with the placing of iron ore in the ground than had the people of other states.

In answer to the diminishing value argument and the disappearance from the state of its natural wealth the opponents of the super-tax contend:

That a part of the ore is converted into other forms of wealth in this state and continues to be a taxable asset of the state.

That the mining of the ore creates other forms of taxable wealth that would not be called into being if we had no ore deposits.

That while at the present time a large part of the ore is shipped out of the state, a considerable part of it comes back again in manufactured form, and thus again becomes a taxable asset of the state.

That if our natural wealth should be subjected to a heavy super-tax because a part of it is being shipped out of the state, then other states would be justified in imposing an equally heavy super-tax on coal and other natural commodities shipped into this state, thus adding to their cost; that such a theory is wholly selfish and economically unsound,

That any substantial increase in the present tax burden on mines will tend to discourage the mining industry and to stop explorations for new tonnages, as well as to discourage, if not eventually stop the experiments that are now being carried on at great private cost to render commercially valuable the immense deposits of low

grade and magnetic ores known to exist within the state, and that excessive taxation in any form will force mining people to discontinue or greatly curtail their activities, and to direct their attention to the ore deposits of other states or countries in which the mining industry is not burdened with excessive taxes .

Bills Affecting Mine Taxation in This State Introduced at Different Sessions of the Legislature

The taxation of iron ore, or of companies engaged in the mining of ore, has occupied the attention of the legislature, to a greater or less extent, at each of its sessions since 1907.

The earlier bills were distinctly "tonnage tax" bills, inasmuch as they imposed the tax on the tonnage produced without regard to value. The bills of 1909 and 1911, however, had some of the elements of value in them, because they provided for a graduated tax based on metallic content, and of course the metallic content of ore has much to do with determining its value.

The first departure from the "tonnage tax" principle was the bill introduced in the session of 1917, which proposed to levy the tax on the gross value of the ore at the mouth of the mine. Both of the bills introduced in the session of 1919, as finally considered, based the tax on the value of the ore and not on the tonnage, one on a so-called semi-net value, and the other on net value. The bill of the extra session of 1919 also used net value as the basis of taxation. In its final evolution, therefore, the proposal has changed from a "tonnage tax" to a "net profit tax."

The burden of the proposed tax has also changed with the nature of the tax. In the earlier proposals the tax imposed was in lieu of all other state taxes while the later ones made it an additional tax, that is, the tax was in addition to the ad valorem tax. The bill of the extra session of 1919 provided for the deduction from the net profit tax of an amount equivalent to the ad valorem tax paid on the ore mined and shipped in any year. In all of the bills the proceeds of the tax were to be credited to the general revenue fund of the state, except the bills of 1909 and 1911, in which it was provided that a specified amount of the tax should be credited to the school and university funds.

Session of 1907

A bill imposing a tax of 25 cents per ton on mined iron ore, and providing for a rebate of 20 cents per ton on all ore smelted within

the state, was introduced in the session of 1907 and was later withdrawn because it was clearly in conflict with the provisions of the federal constitution regulating interstate commerce.

A second bill was introduced, House File No. 851, classifying mines as "A" and "B," the former being defined as mines having iron ore of a metallic content of 49 per cent or more, and the latter as mines having ore of less than 49 per cent in metallic content.

Mines in class "A" were to be assessed and taxed for county and local purposes at the same rate as other property in the district in which the mine was located. No levy was imposed on mines in class "A" for any state purpose, but in lieu thereof, a tax of 5 cents per ton was imposed on the tonnages mined each year.

Provision was made for a mining expert to check production, and for verified reports from mining companies.

A special joint committee was named by the Senate and House to visit the mining districts for the purpose of studying mining conditions on the ground, with instructions to report its findings as promptly as possible. The committee spent several days in the mining districts and, upon its return, reported adversely on the pending tonnage tax bills. The report of the committee may be summarized as follows:

1. That the ore properties of the state should be assessed and taxed on the ad valorem basis, but that the assessed values of such property should be substantially increased.

2. A flat tonnage tax is impracticable because of the wide difference in the value of ore.

3. A sliding scale tonnage tax, based on the value of the ore, would be impracticable, almost inoperative, and would entail great expense on the state.

4. A tonnage tax only on ore shipped out of the state would be invalid, because repugnant to the constitution of the United States.

5. That there was grave doubt whether or not the amendment to the state constitution authorizing the classification of property for purposes of taxation, voted upon at the previous election, (1906) had been adopted, and if not legally adopted, the proposed legislation would be unconstitutional.

6. That " your committee had the utmost assurance that there will, in the near future, be installed a steel plant at Duluth, costing between $10,000,000 and $15,000,000, thus making it possible to manufacture both low and high grade ore into the finished product in

this state, which will be of great benefit to the people of the entire Northwest."

The report of the special joint committee was apparently favorably regarded, for House File No. 851 was indefinitely postponed.

Session of 1909

Another tonnage tax bill, House File No. 227, was introduced in the session of 1909. The bill provided that mines producing 20,000 tons or more of ore between January 1 and September 1 of any year should be known as class "A," and all other mines and lands containing iron ore should be known as class "B." Mines in class "A" were made subject to a specific tax on production, based on metallic content, as follows:

Mines yielding less than 49 per cent in metallic iron, 2 cents per ton.

Mines yielding 49 per cent or over and less than 54 per cent, 3 cents per ton.

Mines yielding 54 per cent or over and less than 59 per cent, 4 cents per ton.

Mines yielding 59 per cent or over, 5 cents per ton.

The graduated tax on mines in class "A" was in lieu of all other state taxes, but such mines were subject to county and local taxation.

The taxes to be paid on mines in class "A" were to be apportioned as follows:

To the state school and university fund, an amount equal to what would accrue to such fund on the valuation of the mines in class "A" if such mines were assessed and taxed on the ad valorem basis, and the remainder to the general revenue fund of the state.

All other mines and mineral lands not included in class "A" were to be assessed and taxed in like manner as other property in the same assessment district.

The bill passed the House by a vote of 61 yeas and 57 nays and the Senate by a vote of 38 yeas and 24 nays, but was vetoed by Governor John A. Johnson.

The reasons given by Governor Johnson for his veto of the bill may be summarized as follows:

1. That both in principle and administrative features, the bill is a more or less uncertain and ill-digested experiment, not fully understood by its friends, and intensely feared by the sections of the

state to which it specially applies, while in application it threatens to violate the fundamental principle of taxation, that of equality, at the same time it fails to meet the constitutional requirement of uniformity in taxing the same class of subjects.

2. That the moral, industrial, and practical effect of the bill would strike a severe blow at the development and prosperity of the mineral sections of the state, affecting alike the agricultural, manufacturing, commercial, financial and educational growth, as well as the settlement of the northern sections of the state, and that it would discourage the investment of both home and foreign capital therein.

3. That the passage of a bill so little understood, and so generally misunderstood, has already plunged the whole subject of taxation under the new constitutional amendment into a sea of political and sectional feeling and prejudice, threatening sectional hatreds and seriously endangering the future best development of the state.

4. That Minnesota has already achieved marked success in the assessment and taxation of iron ore lands under the present ad valorem system; that there is no urgent or vital public need for a measure of this kind, and nothing to prevent the state from taking ample time, and with the aid of the state tax commission, to work out a scientific and equitable system of taxation, devoid of political and sectional feeling, and fair in principle to all sections and interests of the state.

No effort was made to pass the bill over the governor's veto.

Session of 1911

The so-called tonnage tax question again claimed the attention of the legislature in the session of 1911. House File No. 404 proposed to tax mined iron ore for state purposes only in the same manner, under the same classification, and at the same rates as the bill vetoed in 1909. The bill was made a special order in the House and defeated by a vote of 48 yeas and 70 nays.

Session of 1913

House File No. 90, introduced in the session of 1913, was almost identical in its provisions with the bill of 1909, except that it de-

fined class "A" as mines producing not less than 2,000 tons of iro ore during the year.

The committee on taxes and tax laws recommended that the bi be amended to provide that taxes collected under it "shall be di tributed pro rata to the several funds for which state and stat school taxes are levied and certified by the state auditor as provid ed by law," and that when so amended, the bill be reported to th House without recommendation and made a special order for Fe ruary 18th, which report was adopted. It was further slightl amended on the floor of the House when it came up under the sp cial order, and upon roll call, the bill as amended was defeated b a vote of 55 yeas to 61 nays.

House File No. 940 provided for a tax on the franchise of co porations, whether domestic or foreign, possessing the right unde their charters to own, purchase or lease ore lands, or in any wa engage in the business of mining, purchasing or selling iron or the rate of tax being one cent on each ton of ore mined, which ta was to be in addition to all other taxes levied on mineral property

The bill was indefinitely postponed, after a motion that it b printed and placed on general orders had been defeated by a vot of 37 yeas to 50 nays.

Under House File 1080 it was proposed to amend Article IX o the state constitution by authorizing the legislature to classify iro mines into producing and non-producing mines, and to levy a grad ed or progressive tax for state purposes on producing mines, whic tax should be in lieu of all other taxes for state purposes.

The bill was subsequently referred back to its author.

Session of 1915

While no tonnage tax bill was introduced in the session of 191 by a resolution offered in the House, it was proposed to appoint special committee to investigate the taxation of mines and minera and the expenditure of taxes collected for mining property, and t report its findings on or before December 1, 1916. Upon vote, th resolution was indefinitely postponed.

Session of 1917

A new form of tonnage or output tax made its appearance in th session of 1917. By House File No. 253 it was proposed to levy tax of two per cent on the gross value, at the mouth of the min

of all iron ore mined during the year. The tax was in addition to all other taxes levied on mines and minerals and was to be paid into the general revenue fund of the state. The bill passed the House by a vote of 69 yeas and 61 nays, but was defeated in the Senate by a vote of 27 yeas and 40 nays.

Session of 1919

More bills affecting the taxation of iron ore were introduced in the session of 1919 than at any previous session of the legislature. All of them, with one exception, differed materially in principle from the bills heretofore introduced. The bills considered at other sessions based the tax either on the metallic content of the ore mined, or its gross value at the mouth of the mine, while the two bills that were finally considered at the 1919 session imposed the tax on either the net or semi-net value of the ore mined.

House File No. 11 imposed a tax of 2 per cent on the gross value of the ore at the mouth of the mine. It was indefinitely postponed at the request of its author.

House File No. 22 imposed a tax of 10 per cent on the net value of all iron ore mined in any year. It was the first bill using net value as the tax base to be introduced in the House. The tax was in addition to the ad valorem tax, one-half of which was to be apportioned to a land settlement fund and one-half to the common school districts of the state on the basis of school population. The bill was indefinitely postponed at the request of its authors.

House File No. 464, except in title and in the apportionment of the proceeds, was practically a copy of H. F. No. 22. It imposed a tax of 10 per cent on the net value of mined iron ore. The taxes imposed under the bill were to be in addition to the general ad valorem tax. They were payable semi-annually and were to be apportioned one-half to the state school fund and one-half to the general revenue fund of the state.

The bill was referred to the committee on taxes and tax laws and was reported back without recommendation. It was made a special order for March 25th and was defeated by a vote of 61 yeas to 64 nays.

House File No. 729 imposed a tax of 4 per cent on the semi-net value of all iron ore mined in the state in any year. The proposed tax was to be in addition to the general ad valorem tax, the proceeds to be credited to the general revenue fund of the state.

The bill enumerated the items of expense, the aggregate of which was to be deducted from the market value of the ore in determining its taxable value.

A new feature of the bill was a provision permitting the deduction from the tax imposed under it of an amount equivalent to all general taxes, state and local, paid on the ore shipped in any year, the purpose being to make the tax uniform on mined ores and to avoid collecting a double tax annually on such ores.

The committee on taxes and tax laws reported the bill back with the recommendation by a majority of the committee that it be indefinitely postponed, while a minority report recommended it for passage. The majority report was adopted and the bill indefinitely postponed by a vote of 44 yeas to 81 nays.

House File No. 864 marked a new departure in proposed legislation affecting the taxation of iron ore. It amended the classified assessment law by making mined iron ore a separate class for purposes of taxation and imposed a tax equal to 3 per cent of the gross value of such ores at the mouth of the mine. The tax was to be in addition to the taxes levied and collected on the ad valorem basis. Semi-annual payments were provided for, the proceeds of the tax to be credited to the general revenue of the state.

The bill was amended in committee by request of its author, making the tax imposed under it in lieu of other taxes upon mined ore, and providing for the apportionment out of the proceeds of the tax to the counties and local districts in which the mines were located of an amount equal to an ad valorem levy for county and local purposes. The committee reported the bill back and recommended that it be indefinitely postponed. The report was adopted by the House without roll call.

Tax on Royalties

House File No. 195 defined royalties as the net sum or value paid to the owner of the fee, or other right, title, or interest in mineral land for the permission to possess, occupy, or use such mineral land, and imposed a tax on the capitalized value of such royalties, the tax to be imposed on 50 per cent of the full capitalized value and at the same rate as other property is taxed. The bill was indefinitely postponed.

House File No. 849 defined the word "royalty" to mean the amount received by any person having any right, title, or interest

in or to any tract of land in this state for permission to explore, mine, take out and remove ore therefrom, and imposed a tax of 5 per cent on the amount of such royalties. The situs of royalty for the purpose of the bill was fixed in this state and the tax made a specific lien upon the right, title, and interest of the person to whom such royalty was paid.

The bill was reported back with the recommendation that it pass and made a special order for March 26th. It passed the House by a vote of 92 yeas to 25 nays, but was defeated in the Senate by a vote of 33 yeas to 34 nays.

Extra Session of 1919

House File No. 23 of the extra session of 1919 imposed a tax equal to 5 per cent of the value of all ores produced and shipped in any year after deducting certain specified mining and shipping costs. The costs to be deducted from the market value of the ore were:

1. The cost of labor for separating the ore from the ore deposit and placing it in cars for shipment from the mine.

2. The cost of washing, drying, or otherwise beneficiating such ore, if the same is washed, dried or beneficiated.

3. The cost of transporting the ore from the mine to the place of sale.

4. If taken from open pit mines an amount for each ton mined equal to the cost of removing the overburden divided by the number of tons of ore uncovered; the amount of ore uncovered to be determined by the Minnesota tax commission.

5. If taken from underground mines, an amount for each ton of ore mined equal to the cost of sinking and constructing shafts and running drifts to take out the ore, divided by the number of tons that can be advantageously taken out through such drifts and shafts; the number of tons of ore that can be advantageously taken out in each such case to be determined by the Minnesota tax commission.

Provision was made for the deduction from the tax imposed under the bill of an amount equal to the ad valorem tax paid on the ore mined during the year, in order that the tax imposed should be uniform on all mined ore and to avoid collecting a double tax annually on such mined ore.

The tax imposed under the bill was payable annually and was to be credited to the general revenue fund of the state.

The bill passed the House by a vote of 101 yeas to 22 nays, and the Senate by a vote of 38 yeas to 28 nays and was subsequently vetoed by Governor J. A. A. Burnquist.

The reasons given by Governor Burnquist for his veto of the bill may be summarized as follows:

1. That a similar measure was defeated in the House at the regular session, and such a sudden reversal of opinion on the part of many members shows the advisability of further deliberation on a subject of such importance.

2. That the theory of the tax is unjust in that it singles out one industry located in one section of the state as a separate subject of special taxation.

3. That the argument advanced that the enactment of such a law will eliminate the so-called tonnage tax question from the field of politics does not justify an approval of the measure regardless of merit; on the contrary, the enactment of the measure will give those who are prejudiced against a certain section or industry of the state further opportunity for additional controversy as to the adequacy and distribution of the proposed tax.

4. That iron ore is already taxed 50 per cent higher than farm lands, so that the whole subject narrows itself down to the question as to whether iron properties should be taxed to a still greater extent and differently from other property because of the diminishing value theory.

5. That any theory which holds that because the removal of the ore diminishes the value of the land from which it is taken, it should therefore be taxed at a higher rate than other property is unsound and illogical; that the fact that most of the ore is taken out of the state is no more an argument for increasing the taxes thereon than the removal from the state of lumber, granite, grain or any other property justifies an increase of taxes on such property; that the ore is converted into other forms of taxable wealth; that because all of such converted wealth does not remain in Minnesota does not justify a higher tax on it than on other forms of converted wealth removed from the state.

6. That iron ore is not the product of nature to any greater extent than the soil; that only a small part of it originally belonged

to the state through federal grant, and that therefore it is not a natural heritage of the people of Minnesota.

7. That if a profit tax should be applied to one industry located in one section of the state, then it should be applied to all industries located in all sections of the state.

8. That if the owners of iron ore have secured a practical monopoly of the product by unfair methods, and are obtaining unreasonable profits by reason thereof, the remedy is through the courts and by suitable legislation, rather than by an attempt on the part of the state to share in the alleged illegal profits through taxation.

9. That in enacting tax legislation equality and uniformity should be observed; that taxation should not be used as an instrument to impose unfair and excessive burdens on any class, industry or section of the state; that revenues too easily secured tend to extravagance in governmental expenditures; that legislation based on doubtful theories of taxation liable to lead to continual litigation and sectional strife should be avoided; that our greatest progress will be realized in the enactment of fair measures that tend to concord rather than to discord.

Probable Revenue From a Net Profit Tax

The amount of revenue that would be produced in any year by a net profit tax on mined iron ore would depend on several fluctuating factors. It could not be estimated in advance with any absolute certainty because of these fluctuating factors. The factors that would determine the amount of the tax in any year are, first, the rate of the tax; second, the quantity shipped, and, third, the net profit derived from the mining of the ore.

The first factor could be a fixed one, but the second and third factors would fluctuate from year to year, according to the quantity and grade of ore shipped, labor and other mining costs, transportation costs, and the market price of the ore. Then, too, if the larger part of shipments in any year were made from mines with good grades of ore and low production costs, the net profits would be correspondingly larger, while if the larger part of shipments were made from mines with poorer grades of ore and high production costs, the net profits would be correspondingly smaller. Because of these changing conditions the yield that might be expected from a net profit tax in any year could at best be only approximated, and not determined in advance with any great degree of accuracy.

If royalties paid should be included in mining costs, and of course they are a cost to the operator, the average net profits derived from mining would be reduced accordingly. With royalties included in mining costs, and judging the future by past experience, it is not improbable that in a year of adverse business conditions average net profits might be as low as $1.00 per ton, or even less, while in a year of prosperous business conditions such average profits might approach $1.50 per ton, or even exceed this amount. Perhaps anywhere from $1.20 to $1.30 per ton might be taken as average expected net profits during the next five or ten years. It should be understood, however, that these figures are estimates only. They may be affected materially by changing mining or market conditions, or by the increasing use of low grade ores. The latter, however, would affect ad valorem values in an equal ratio to net profit values.

Because of uncertainty of amount of future public revenues that may be expected from a percentage tax on net profits derived from the mining of iron ore, we have prepared the following basic tables showing the amounts of such revenues on assumed annual shipments that may be expected in any year from a tax on net profits at different percentage rates The tables also show the amounts of future public revenues that may be expected at different millage rates from our present ad valorem method of taxing iron ore. It is hoped the tables may be timely as a matter of public information, as well as an aid in determining what would be a fair percentage tax on net profits should it be deemed advisable to adopt the net profit method of taxing mined iron ore.

Comparison of Net Profit Taxes With Ad Valorem Taxes

There is a noticeable lack of information, as well as some misconception, regarding the probable amount of public revenues that may be expected from a net profit tax on iron ore. So far as we are aware, no authentic estimates of the probable yield of such a tax have been prepared by either the proponents or opponents of the tax. It is true that certain estimates have appeared from time to time in the public press, but a casual examination of the amounts suggested indicates that such estimates are based on mere guess rather than absolute figures.

The three prime factors that determine the amount of yield in any year from a net profit tax, as already explained, are, first, the

per cent of the tax; second, the profit per ton derived from the mining of the ore, and, third, the quantity mined and shipped during the year. The first may be a fixed factor, but because of changing industrial conditions the second and third factors will vary from year to year. It therefore becomes necessary, in estimating the tax yield, to assume definite figures for all three factors.

In compiling the tables that follow we have assumed a total tonnage of 1,400,000,000 tons, and annual shipments of 35,000,000 tons for a period of forty years, on which we have estimated profits at varying rates, beginning at $1.00 per ton and increasing by 10 cent steps until the net profit reaches $1.60 per ton, and to these profits we have applied different tax rates, beginning at 1 per cent and rising to 10 per cent, for the purpose of showing the total tax yield that may be expected from a given profit at a given tax rate.

In order that the amount of the yield from a net profit tax may be compared with the yield from our present ad valorem method of taxing iron ores, we have computed the amount of taxes that may be derived from the latter method on tax levies of 4 to 12 mills, beginning on a present assumed taxable value of $280,000,000, and decreasing $7,000,000 annually because of shipments.

While, in compiling the tables, we have used a present tonnage of 1,400,000,000 tons of merchantable ore with an assessed value of $280,000,000, and an exhaustion period of forty years, it should be understood that these figures are approximate rather than absolute. The tonnages may be substantially increased by new discoveries of ore, or by a process of beneficiating low grade ores by which they may be made merchantable, thus extending the exhaustion period, while taxable values may be materially changed by future market conditions.

TABLE NO. 1

Statement showing ad valorem taxes on iron ore, each year for 40 years, on a present taxable value of $280,000,000 and decreasing $7,000,000 annually, based on tax levies of 4, 5, 6, 7, 8, 9, 10, 11 and 12 mills, and also showing the per cent of profit tax required on annual shipments of 35,000,000 tons at a net profit of $1.20 per ton to equal ad valorem taxes at the different rates of levy.

Year	Assessed Value	4 Mills	5 Mills	6 Mills	7 Mills	8 Mills	9 Mills	10 Mills	11 Mills	12 Mills
1.....	$280,000,000	$1,120,000	$1,400,000	$1,680,000	$1,960,000	$2,240,000	$2,520,000	$2,800,000	$3,080,000	$3,360,000
2.....	273,000,000	1,092,000	1,365,000	1,638,000	1,911,000	2,184,000	2,457,000	2,730,000	3,003,000	3,276,000
3.....	266,000,000	1,064,000	1,330,000	1,596,000	1,862,000	2,128,000	2,394,000	2,660,000	2,926,000	3,192,000
4.....	259,000,000	1,036,000	1,295,000	1,554,000	1,813,000	2,072,000	2,331,000	2,590,000	2,849,000	3,108,000
5.....	252,000,000	1,008,000	1,260,000	1,512,000	1,764,000	2,016,000	2,268,000	2,520,000	2,772,000	3,024,000
6.....	245,000,000	980,000	1,225,000	1,470,000	1,715,000	1,960,000	2,205,000	2,450,000	2,695,000	2,940,000
7.....	238,000,000	952,000	1,190,000	1,428,000	1,666,000	1,904,000	2,142,000	2,380,000	2,618,000	2,856,000
8.....	231,000,000	924,000	1,155,000	1,386,000	1,617,000	1,848,000	2,079,000	2,310,000	2,541,000	2,772,000
9.....	224,000,000	896,000	1,120,000	1,344,000	1,568,000	1,792,000	2,016,000	2,240,000	2,464,000	2,688,000
10.....	217,000,000	868,000	1,085,000	1,302,000	1,519,000	1,736,000	1,953,000	2,170,000	2,387,000	2,604,000
11.....	210,000,000	840,000	1,050,000	1,260,000	1,470,000	1,680,000	1,890,000	2,100,000	2,310,000	2,520,000
12.....	203,000,000	812,000	1,015,000	1,218,000	1,421,000	1,624,000	1,827,000	2,030,000	2,233,000	2,436,000
13.....	196,000,000	784,000	980,000	1,176,000	1,372,000	1,568,000	1,764,000	1,960,000	2,156,000	2,352,000
14.....	189,000,000	756,000	945,000	1,134,000	1,323,000	1,512,000	1,701,000	1,890,000	2,079,000	2,268,000
15.....	182,000,000	728,000	910,000	1,092,000	1,274,000	1,456,000	1,638,000	1,820,000	1,902,000	2,184,000
16.....	175,000,000	700,000	875,000	1,050,000	1,225,000	1,400,000	1,575,000	1,750,000	1,925,000	2,100,000
17.....	168,000,000	672,000	840,000	1,008,000	1,176,000	1,344,000	1,512,000	1,680,000	1,848,000	2,016,000
18.....	161,000,000	644,000	805,000	966,000	1,127,000	1,288,000	1,449,000	1,610,000	1,771,000	1,932,000
19.....	154,000,000	616,000	770,000	924,000	1,078,000	1,232,000	1,386,000	1,540,000	1,694,000	1,848,000
20.....	147,000,000	588,000	735,000	882,000	1,029,000	1,176,000	1,323,000	1,470,000	1,617,000	1,764,000
21.....	140,000,000	560,000	700,000	840,000	980,000	1,120,000	1,260,000	1,400,000	1,540,000	1,680,000
22.....	133,000,000	532,000	665,000	798,000	931,000	1,064,000	1,197,000	1,330,000	1,463,000	1,596,000
23.....	126,000,000	504,000	630,000	756,000	882,000	1,008,000	1,134,000	1,260,000	1,386,000	1,512,000
24.....	119,000,000	476,000	595,000	714,000	833,000	952,000	1,071,000	1,190,000	1,309,000	1,428,000
25.....	112,000,000	448,000	560,000	672,000	784,000	896,000	1,008,000	1,120,000	1,232,000	1,344,000

26.....	105,000,000	420,000	525,000	630,000	735,000	840,000	945,000	1,050,000	1,155,000	1,260,000
27.....	98,000,000	392,000	490,000	588,000	686,000	784,000	882,000	980,000	1,078,000	1,176,000
28.....	91,000,000	364,000	455,000	546,000	637,000	728,000	819,000	910,000	1,001,000	1,092,000
29.....	84,000,000	336,000	420,000	504,000	588,000	672,000	756,000	840,000	924,000	1,008,000
30.....	77,000,000	308,000	385,000	462,000	539,000	616,000	693,000	770,000	847,000	924,000
31.....	70,000,000	280,000	350,000	420,000	490,000	560,000	630,000	700,000	770,000	840,000
32.....	63,000,000	252,000	315,000	378,000	441,000	504,000	567,000	630,000	693,000	756,000
33.....	56,000,000	224,000	280,000	336,000	392,000	448,000	504,000	560,000	616,000	672,000
34.....	49,000,000	196,000	245,000	294,000	343,000	392,000	441,000	490,000	539,000	588,000
35.....	42,000,000	168,000	210,000	252,000	294,000	336,000	378,000	420,000	462,000	504,000
36.....	35,000,000	140,000	175,000	210,000	245,000	280,000	315,000	350,000	385,000	420,000
37.....	28,000,000	112,000	140,000	168,000	196,000	224,000	252,000	280,000	308,000	336,000
38.....	21,000,000	84,000	105,000	126,000	147,000	168,000	189,000	210,000	231,000	252,000
39.....	14,000,000	56,000	70,000	84,000	98,000	112,000	126,000	140,000	154,000	168,000
40.....	7,000,000	28,000	35,000	42,000	49,000	56,000	63,000	70,000	77,000	84,000
		$22,960,000	$28,700,000	$34,440,000	$40,180,000	$45,920,000	$51,660,000	$57,400,000	$63,140,000	$68,880,000
Equivalent in profit tax		1.37%	1.71%	2.05%	2.39%	2.73%	3.08%	3.42%	3.76%	4.10%

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TABLE II

Statement showing average per cent of tax required for 40 years on net profits of $1.00, $1.10, $1.20, $1.30, $1.40, $1.50 and $1.60 per ton to equal an ad valorem tax levy of 4, 5, 6, 7, 8, 9, 10, 11 and 12 mills, on a total tonnage of 1,400,000,000 tons having a taxable value of $280,000,000 based on annual shipments of 35,000,000 tons and a decreasing ad valorem valuation of $7,000,000 per year.

Levy in mills ad valorem	Equivalent in Percentage Tax on Net Profit per Ton at						
	$1.00	$1.10	$1.20	$1.30	$1.40	$1.50	$1.60
	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent
4 mills.....	1.64	1.49	1.37	1.26	1.17	1.09	1.02
5 mills.....	2.05	1.86	1.71	1.58	1.46	1.37	1.28
6 mills.....	2.46	2.24	2.05	1.89	1.76	1.64	1.53
7 mills.....	2.87	2.61	2.39	2.21	2.05	1.91	1.79
8 mills.....	3.28	2.98	2.73	2.52	2.34	2.19	2.05
9 mills.....	3.69	3.35	3.08	2.84	2.64	2.46	2.31
10 mills.....	4.10	3.73	3.42	3.15	2.93	2.73	2.56
11 mills.....	4.51	4.10	3.76	3.47	3.22	3.00	2.81
12 mills.....	4.92	4.48	4.10	3.78	3.52	3.28	3.07

TABLE III

Statement showing total amount of taxes in 40 years, based on annual shipments of 35,000,000 tons at a net profit of $1.00, $1.10, $1.20, $1.30, $1.40, $1.50 and $1.60 per ton and tax rates of 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 per cent.

	$1.00	$1.10	$1.20	$1.30	$1.40	$1.50	$1.60
1 per cent.....	$14,000,000	$15,400,000	$16,800,000	$18,200,000	$19,600,000	$21,000,000	$22,400,000
2 per cent.....	28,000,000	30,800,000	33,600,000	36,400,000	39,200,000	42,000,000	44,800,000
3 per cent.....	42,000,000	46,200,000	50,400,000	54,600,000	58,800,000	63,000,000	67,200,000
4 per cent.....	56,000,000	61,600,000	67,200,000	72,800,000	78,400,000	84,000,000	89,600,000
5 per cent.....	70,000,000	77,000,000	84,000,000	91,000,000	98,000,000	105,000,000	112,000,000
6 per cent.....	84,000,000	92,400,000	100,800,000	109,200,000	115,600,000	126,000,000	134,400,000
7 per cent.....	98,000,000	107,800,000	117,600,000	127,400,000	137,200,000	147,000,000	156,800,000
8 per cent.....	112,000,000	123,200,000	134,400,000	145,600,000	156,800,000	168,000,000	179,200,000
9 per cent.....	126,000,000	138,600,000	151,200,000	163,800,000	176,400,000	189,000,000	201,600,000
10 per cent.....	140,000,000	154,000,000	168,000,000	182,000,000	196,000,000	210,000,000	224,000,000

TABLE IV

Statement showing the average millage tax levy required for 40 years to equal a profit tax of 1 per cent to 10 per cent on net profits of $1.00, $1.10, $1.20, $1.30, $1.40, $1.50 and $1.60 per ton, based on 1,400,000,000 tons of ore having a taxable value of $280,000,000, and shipments of 35,000,000 tons annually with a decreasing ad valorem valuation of $7,000,000 per year.

Profit per Ton	Millage levy required to equal a net profit of:									
	1 Per cent Mills	2 Per cent Mills	3 Per cent Mills	4 Per cent Mills	5 Per cent Mills	6 Per cent Mills	7 Per cent Mills	8 Per cent Mills	9 Per cent Mills	10 Per cent Mills
$1.00.....	2.44	4.88	7.32	9.76	12.20	14.64	17.07	19.51	21.95	24.39
1.10.....	2.68	5.37	8.05	10.73	13.42	16.10	18.78	21.47	24.15	26.83
1.20.....	2.93	5.85	8.78	11.71	14.64	17.56	20.49	23.42	26.34	29.27
1.30.....	3.17	6.34	9.51	12.68	15.85	19.03	22.20	25.37	28.54	31.71
1.40.....	3.41	6.83	10.25	13.66	17.07	20.49	23.90	27.32	30.73	34.15
1.50.....	3.66	7.32	10.98	14.64	18.29	21.95	25.61	29.27	32.93	36.59
1.60.....	3.90	7.81	11.71	15.61	19.51	23.42	27.32	31.22	35.12	39.03

TABLE V

Statement showing total amount of ad valorem taxes in 40 years on a present taxable value of $280,000,000, and decreasing $7,000,000 per year, with rates at 4, 5, 6, 7, 8, 9, 10, 11 and 12 mills.

4 mills	$22,960,000
5 mills	28,700,000
6 mills	34,440,000
7 mills	40,180,000
8 mills	45,920,000
9 mills	51,660,000
10 mills	57,400,000
11 mills	63,140,000
12 mills	68,880,000

Average Ad Valorem Taxes and Net Profit Taxes Compared

The state tax levy for the past 20 years shows an average of 3.81 mills for the 20-year period; 4.72 mills for the last 10-year period, and 5.16 mills for the last 5-year period.

The higher average state levy during the last 5-year period is largely due to special levies for soldiers' bonuses, university buildings, and fire and other relief, amounting to 2.17 mills for each of the years 1919 and 1920.

If we apply the high average rate of 5.16 mills for the last 5-year period to a present mineral valuation of $280,000,000, and decreasing it $7,000,000 annually because of shipments, we find that the total ad valorem tax, computed on this basis, would be $29,618,400 for the entire 40-year period.

In order to produce the same amount of taxes from a net profit tax, based on a present tonnage of 1,400,000,000 tons, with annual shipments of 35,000,000 tons, it would be necessary to apply the following percentage rates:

On a net profit of $1.00 per ton	2.12 per cent
On a net profit of 1.10 per ton	1.92 per cent
On a net profit of 1.20 per ton	1.76 per cent
On a net profit of 1.30 per ton	1.63 per cent
On a net profit of 1.40 per ton	1.51 per cent
On a net profit of 1.50 per ton	1.41 per cent
On a net profit of 1.60 per ton	1.32 per cent

TABLE VI

Comparative yield of a 3 per cent and 4 per cent tax on net profits of $1.00 per ton on 1,400,000,000 tons of iron ore with annual shipments of 35,000,000 tons, and a 5-mill and 6-mill ad valorem tax on a present taxable value of $280,000,000 and decreasing $7,000,000 annually because of shipments.

Year	3 per cent Profit Tax	5-Mill Ad Valorem Tax	4 per cent Profit Tax	6-Mill Ad Valorem Tax
1	$1,050,000	$1,400,000	$1,400,000	$1,680,000
2	1,050,000	1,365,000	1,400,000	1,638,000
3	1,050,000	1,330,000	1,400,000	1,596,000
4	1,050,000	1,295,000	1,400,000	1,554,000
5	1,050,000	1,260,000	1,400,000	1,512,000
6	1,050,000	1,225,000	1,400,000	1,470,000
7	1,050,000	1,190,000	1,400,000	1,428,000
8	1,050,000	1,155,000	1,400,000	1,386,000
9	1,050,000	1,120,000	1,400,000	1,344,000
10	1,050,000	1,085,000	1,400,000	1,302,000
11	1,050,000	1,050,000	1,400,000	1,260,000
12	1,050,000	1,015,000	1,400,000	1,218,000
13	1,050,000	980,000	1,400,000	1,176,000
14	1,050,000	945,000	1,400,000	1,134 000
15	1,050,000	910,000	1,400,000	1,092,000
16	1,050,000	875,000	1,400,000	1,050,000
17	1,050,000	840,000	1,400,000	1,008,000
18	1,050,000	805,000	1,400,000	966,000
19	1,050,000	770,000	1,400,000	924,000
20	1,050,000	735,000	1,400,000	882,000
21	1,050,000	700,000	1,400,000	840,000
22	1,050,000	665,000	1,400,000	798,000
23	1,050,000	630,000	1,400,000	756,000
24	1,050,000	595,000	1,400,000	714,000
25	1,050,000	560,000	1,400,000	672,000
26	1,050,000	525,000	1,400,000	630,000
27	1,050,000	490,000	1,400,000	588,000
28	1,050,000	455,000	1,400,000	546,000
29	1,050,000	420,000	1,400,000	504,000
30	1,050,000	385,000	1,400,000	462,000
31	1,050,000	350,000	1,400,000	420,000
32	1,050,000	315,000	1,400,000	378,000
33	1,050,000	280,000	1,400,000	336,000
34	1,050,000	245,000	1,400,000	294,000
35	1,050,000	210,000	1,400,000	252,000
36	1,050,000	175,000	1,400,000	210,000
37	1,050,000	140,000	1,400,000	168,000
38	1,050,000	105,000	1,400 000	126,000
39	1,050,000	70,000	1,400,000	84,000
40	1,050,000	35,000	1,400,000	42,000
	$42,000,000	$28,700,000	$56,000,000	$34,440,000
	Equals 7.32 Mills		Equals 9.75 Mills	

TABLE VII

Statement showing ad valorem taxes on iron ore, each year for 40 years, on the basis of 33⅓ per cent of full value on a present taxable value of $186,667,000, and decreasing $4,667,000 annually because of shipments, based on tax levies of 4, 5, 6, 7, 8, 9, 10, 11 and 12 mills; also total taxes for the entire period at 33⅓ per cent and 50 per cent of full value.

Year	Assessed Value	4 Mills	5 Mills	6 Mills	7 Mills	8 Mills	9 Mills	10 Mills	11 Mills	12 Mills
1.....	$186,667,000	$746,668	$933,335	$1,120,002	$1,306,669	$1,493,336	$1,680,003	$1,866,670	$2,053,337	$2,240,004
2.....	182,000,000	728,000	910,000	1,092,000	1,274,000	1,456,000	1,638,000	1,820,000	2,002,000	2,184,000
3.....	177,333,000	709,332	886,665	1,063,998	1,241,331	1,418,664	1,595,997	1,773,330	1,950,663	2,127,996
4.....	172,667,000	690,668	863,335	1,036,002	1,208,669	1,381,336	1,554,003	1,726,670	1,899,337	2,072,004
5.....	168,000,000	672,000	840,000	1,008,000	1,176,000	1,344,000	1,512,000	1,680,000	1,848,000	2,016,000
6.....	163,333,000	653,332	816,665	979,998	1,143,331	1,306,664	1,469,997	1,633,330	1,796,663	1,959,996
7.....	158,667,000	634,668	793,335	952,002	1,110,669	1,269,336	1,428,003	1,586,670	1,745,337	1,904,004
8.....	154,000,000	616,000	770,000	924,000	1,078,000	1,232,000	1,386,000	1,540,000	1,694,000	1,848,000
9.....	149,333,000	597,332	746,665	895,998	1,045,331	1,194,664	1,343,997	1,493,330	1,642,663	1,791,996
10.....	144,667,000	578,668	723,335	868,002	1,012,669	1,157,336	1,302,003	1,446,670	1,591,337	1,736,004
11.....	140,000,000	560,000	700,000	840,000	980,000	1,120,000	1,260,000	1,400,000	1,540,000	1,680,000
12.....	135,333,000	541,332	676,665	811,998	947,331	1,082,664	1,217,997	1,353,330	1,488,663	1,623,996
13.....	130,667,000	522,668	653,335	784,002	914,669	1,045,336	1,176,003	1,306,670	1,437,337	1,568,004
14.....	126,000,000	504,000	630,000	756,000	882,000	1,008,000	1,134,000	1,260,000	1,386,000	1,512,000
15.....	121,333,000	485,332	606,665	727,998	849,331	970,664	1,091,997	1,213,330	1,334,663	1,455,996
16.....	116,667,000	466,668	583,335	700,002	816,669	933,336	1,050,003	1,166,670	1,283,337	1,400,004
17.....	112,000,000	448,000	560,000	672,000	784,000	896,000	1,008,000	1,120,000	1,232,000	1,344,000
18.....	107,333,000	429,332	536,665	643,998	751,331	858,664	965,997	1,073,330	1,180,663	1,287,996
19.....	102,667,000	410,668	513,335	616,002	718,669	821,336	924,003	1,026,670	1,129,337	1,232,004
20.....	98,000,000	392,000	490,000	588,000	686,000	784,000	882,000	980,000	1,078,000	1,176,000
21.....	93,333,000	373,332	466,665	559,998	653,331	746,664	839,997	933,330	1,026,663	1,119,996
22.....	88,667,000	354,668	443,335	532,002	620,669	709,336	798,003	886,670	975,337	1,064,004
23.....	84,000,000	336,000	420,000	504,000	588,000	672,000	756,000	840,000	924,000	1,008,000
24.....	79,333,000	317,332	396,665	475,998	555,331	634,664	713,997	793,330	872,663	951,996
25.....	74,667,000	298,668	373,335	448,002	522,669	597,336	672,006	746,670	821,337	896,004
26.....	70,000,000	280,000	350,000	420,000	490,000	560,000	630,000	700,000	770,000	840,000
27.....	65,333,000	261,332	326,665	391,998	457,331	522,664	587,997	653,330	718,663	783,996
28.....	60,667,000	242,668	303,335	364,002	424,669	485,336	546,003	606,670	667,337	728,004
29.....	56,000,000	224,000	280,000	336,000	392,000	448,000	504,000	560,000	616,000	672,000

30.....	51,333,000	205,332	256,665	307,998	359,331	410,664	461,997	513,330	564,663	615,996
31.....	46,667,000	186,668	233,335	280,002	326,669	373,336	420,003	466,670	513,337	560,004
32.....	42,000,000	168,000	210,000	252,000	294,000	336,000	378,000	420,000	462,000	504,000
33.....	37,333,000	149,332	186,665	223,998	261,331	298,664	335,997	373,330	410,663	447,996
34.....	32,667,000	130,668	163,335	196,002	228,669	261,336	294,003	326,670	359,337	392,004
35.....	28,000,000	112,000	140,000	168,000	196,000	224,000	252,000	280,000	308,000	336,000
36.....	23,333,000	93,332	116,665	139,998	163,331	186,664	209,997	233,330	256,663	279,996
37.....	18,667,000	74,668	93,335	112,002	130,669	149,336	168,003	186,670	205,337	224,004
38.....	14,000,000	56,000	70,000	84,000	98,000	112,000	126,000	140,000	154,000	168,000
39.....	9,333,000	37,332	46,665	55,998	65,331	74,664	83,997	93,330	102,663	111,996
40.....	4,667,000	18,668	23,335	28,002	32,669	37,336	42,003	46,670	51,337	56,004
Taxable at 33⅓%		$15,306,668	$19,133,335	$22,960,002	$26,786,669	$30,613,336	$34,440,006	$38,266,670	$42,093,337	$45,920,004
Taxable at 50%		22,960,000	28,700,000	34,440,000	40,180,000	45,920,000	51,660,000	57,400,000	63,140,000	68,880,000
Decreased at 33⅓%		7,653,332	9,566,665	11,479,998	13,393,331	15,306,664	17,219,994	19,133,330	21,046,663	22,959,996

The Reduction of the Taxable Value of Iron Ore to 33⅓ Per Cent of True and Full Value

If the taxable value of iron ore be reduced to 33⅓ per cent of true and full value it would mean a reduction of one-third in the total taxable value of this class of property. This reduction in taxable value, however, would not necessarily mean a corresponding reduction in amount of taxes such property would pay. An increase in the millage levy might offset, in whole or in part, the reduction in the taxable value.

To illustrate the point: A levy of 60 mills would represent a tax of 6 cents on each dollar of taxable value. If the taxable value were reduced one-third, to 66⅔ cents, the tax would then be 4 cents. But an increase in the tax rate to 75 mills would increase the tax to 5 cents, while an increase in the rate to 90 mills would mean an increase in the tax to 6 cents, or just where it was before the reduction was made in taxable value.

The maximum number of mills, however, that may be levied by counties and local districts, except school taxes in certain independent school districts, is limited by law. This limitation might prevent any substantial increase in the present millage rates.

Tables I and VII show comparative taxes on iron ore at 50 per cent and 33⅓ per cent of full value for each year of the 40-year period, the former based on a present valuation of $280,000,000 and decreasing $7,000,000 annually, and the latter on a present valuation of $186,667,000, and decreasing $4,667,000 annually due to shipments, both computed on tax levies running from 4 to 12 mills. Total taxes for the entire period on both percentages, together with the total reduction due to the decrease in taxable value, are shown at the end of Table VII.

Should Not Be a Sectional Issue

The so-called tonnage tax question, and in its more recent phase, the net profit tax on mined iron ore, has attracted more or less public attention for more than a dozen years past. Much has been said and written on the subject, both for and against, that would not stand the scrutiny of calm and impartial investigation. On the other hand, the proposal has been supported in some quarters by arguments that seemed to justify such a tax, and met by equally convincing arguments that such a tax was not only economically unsound, but that it threatened the very existence of one of the great industries of the state.

The issue, unfortunately, has become somewhat sectional. There is a feeling in some parts of the state that mining corporations whose activities are confined to the northeastern part of the state are making excessive profits from the mining of iron ore, while, because of the so-called "natural heritage" and diminishing value theories, a considerable part of these profits by right belongs to the state and ought to inure to the benefit of all the people of the state. In the northeastern section it is felt that a tonnage tax is a menace to that particular section, and that the enactment of such a law would spell disaster to a large number of citizens of our commonwealth.

While there may be some prejudice on one side and some undue fear on the other, the thoughtful citizen will be loth to believe that a majority of the people of the state would deliberately, and by force of numbers, impose an unfair and unjust tax on any section, or any industry in the state, while, on the other hand, he will be just as loth to believe that any section of the state would deliberately attempt to evade any of its obligations to contribute its just and reasonable share toward the public revenues.

The question of a tonnage tax or a tax on profits derived from mining is too important and too far-reaching in its possible consequences to be settled by either prejudice or sectionalism. Any proposal to change our present method of taxing the great mineral deposits of the state should be considered purely on its merits. It should not be a measure to enrich the state treasury, regardless of justice or its effect on any section or industry of the state. Minnesota cannot afford to jeopardize its good name by imposing an unjust and unfair tax on any property within its boundaries, nor can it afford to permit any property to escape its just share of the public burden.

If the present method of taxing the mineral wealth of the state is not equitable, or is in any way unfair to the people of the state or to those engaged in mining, it should be changed, but any proposed change should be based on absolute justice, and not on prejudice or sectionalism, or with the single idea of exacting all the traffic will stand. If mining companies are not now paying as much in taxes as they should, steps should be taken to increase the amount, but not to the extent of jeopardizing the great mining industry of the state. While every type of property should bear its fair share of the public burden, no property should be confiscated by taxation. If the so-called tonnage tax question is approached in this spirit, a just and equitable law can be worked out.

In considering a change in the method of taxing iron ores, it should not be overlooked that we have a large tonnage of low grade ores in the state that are not now merchantable, and that any increase in the tax burden on such ores would result in discouraging, if not entirely stopping their further development. Indeed, the state could well afford to practically exempt low grade ores from taxation, or at least impose a very low tax on them, until some method of treatment can be devised by which such ores can be made a merchantable commodity. There are millions of tons of such ores in the state that are now of little value, and will probably remain so, unless the state aids in some way in their development. It is generally believed that large deposits of these low grade ores will be found in a considerable area extending from the northeastern to the southwestern part of the state. If they can be made merchantable by any process of beneficiation the state will have ore to mine for an indefinite number of years to come.

Changing the Method of Mineral Taxation in Minnesota

While the members of the tax commission are not in entire agreement as to the best method, under existing conditions, of taxing iron ore, they are in full agreement that if the mining industry were in its infancy some method of output taxation, perhaps on the basis of net profits, would be preferable to the ad valorem tax method. But after more than a quarter of a century of mining activity, during which time populous cities and villages have sprung up in the mining sections of the state, with revenue systems based on ad valorem taxation, we do not feel it would be either practicable or expedient to now substitute an output or net profit tax for the ad valorem tax, so far as county and local revenues are concerned.

The amount of public revenue that might be derived in any year from an output or net profit tax could at best be only approximated. As already explained, it would fluctuate from year to year according to output or profits. In a year of adverse mining conditions it would probably be abnormally low, while in a year of prosperous mining conditions it would probably be abnormally high.

This fluctuating factor in amount of annual revenue to be derived from an output or net profit tax would not be of serious moment to the state, because by far the greater part of its public revenues is derived from other sources of taxation. But with counties and local districts it is quite different. In many of them the revenues derived from mine taxation represent by far the greater part of the whole. In some of the municipalities in the mining sections of the state more than 90 per cent of their total public revenues comes from mine taxation.

Reasonable certainty in the amount of annual revenue that may be expected from any method of taxation is one of the essential factors in the wise and economical administration of public affairs. This is especially true of the smaller units of government. School and local districts must be able to estimate, with reasonable accuracy, the probable amount of money that will be at their disposal during the year in order that they may regulate their expenditures accordingly. If districts having large ore deposits were dependent upon an output or net profit tax, they might find themselves in serious financial straits in a lean mining year and with a surplus in a prosperous mining year. Neither condition is desirable. The uncertainty in the amount of public revenue that may be expected in any year from an output or net profit tax on iron ore makes either proposal, in our opinion, an undesirable system of taxation in local districts depending largely on mine taxation for public revenues.

The situation is somewhat different with the state. As already pointed out, only a relatively small part of its total revenues comes from mine taxation. The fluctuating element in an output or net profit tax would not seriously affect state revenues. The prosperous year would take care of the lean year. If necessary, state expenditures can be predicated on the average amount of revenue that may be expected from an output or net profit tax for a term of years, and either more or less than the expected average in any year would not embarrass the state financially. It could therefore, in our opinion, substitute an output or profit tax for the ad valorem tax without any serious effect on its public revenues, other than as the rate might affect them.

A Net Profit Tax Should be in Lieu of All Other State Taxes

We have used the term "substitute," rather than the term "super-tax" in the preceding paragraph, because we believe that if it should be decided to impose a tax for state purposes on the net profits derived from the mining of iron ore, such tax should be a lieu tax, and not a super-tax; that is, it should be in lieu of all other state taxes. We do not believe the state would be justified in imposing two different kinds of taxes on the same class of property, whether it be iron ore or any other property. Of course it may be urged that an ad valorem tax on the property and a tax on net profits would not be a double tax on the same class of subjects, because one is a tax on the value and the other on profits. But in effect it is double taxation, for it imposes a tax, first on the property itself, and then on the net proceeds derived from the sale of the property. It would at least be a double tax burden, whether such burden be large or small. After all, it is a question of how much revenue iron ore should contribute toward the public expenses. Whatever that amount should be, it can be raised by either a specific or general ad valorem tax, or a net profit tax, without experimenting with a double tax system of at least doubtful constitutionality.

It may be urged that to make the net profit tax on iron ore a lieu tax, so far as all state levies are concerned, would result in a considerable loss to the school and university funds, and to other special funds, as well as to the state road and bridge fund. But all of these special levies are made under statutory authority, and the loss arising from a substituted net profit tax could be taken care of by a specific apportionment of the tax, or by legislative appropriations out of revenues derived therefrom, except in the case of the state levy for road and bridge purposes, the latter not being a purpose for which the legislature may make appropriations under the state constitution. The amounts of the different state tax levies on iron ore for all purposes during the past five years were as follows:

STATEMENT OF AMOUNT AND PURPOSE OF STATE TAX LEVIES ON IRON ORE TONNAGES FOR THE YEARS 1916 TO 1920 INCLUSIVE.

	1916.		1917.		1918.		1919.		1920.	
Assessment	$279,306,877		$295,251,126		$301,839,976		$287,447,166		$295,778,349	
	Rate Mills.	Amount.	Rate Mills.	Amount.	Rate Mills.	Amount.	Rate Mills.	Amount.	Rate Mills	Amount.
State Taxes:										
Revenue	1.00	$279,307	2.50	$738,128	1.00	$301,840	3.50	$1,006,065	.80	$236,623
Soldiers' relief	.10	27,931	.10	29,525	.10	30,184	.10	28,745	.10	29,578
Road and bridge	1.00	279,307	1.00	295,251	1.00	301,840	1.00	287,447	1.00	295,778
Prison building	.15	41,896	.15	44,288	.10	30,184	....	.....	....	.....
National guard armories	.03	8,379	.03	8,858	....	.....	.03	8,623	....	.....
Educational building	.12	33,517	....	.....	....	.....	.32	91,983	.32	94,649
Historical Society building	.01	2,793	.01	2,952	.01	3,018	.01	2,875	.05	14,789
Itasca state park	.01	2,793	.01	2,952	.01	3,018	.01	2,875	.02	5,916
Soldiers' bonuses	....	.....	....	.....	....	.....	1.75	503,033	1.50	443,668
State board	....	.....	....	.....	....	.....	.05	14,372	.10	29,578
Forest fires	....	.....	....	.....	....	.....	.05	14,372	.25	73,945
General school	1.00	279,307	1.00	295,251	1.00	301,480	1.00	287,447	1.00	295,778
University	.23	64,240	.23	67,908	.23	69,423	.23	66,113	.23	68,029
Teachers' insurance and retirement	.05	13,965	.05	14,762	.05	15,092	.05	14,372	.05	14,788
Totals	3.70	$1,033,435	6.08	$1,499,875	3.50	$1,056,439	8.10	$2,328,322	5.42	$1,603,119

Constitutionality of a Net Profit Tax

The question of the constitutionality of a net profit tax on iron ore, especially if the tax is imposed as a super-tax and not as a lieu tax, is one that should be carefully considered by the legislature. In essence a net profit tax on iron ore is a tax on the net income derived from the mining of the ore, and while it is possible that the legislature, under its constitutional power to classify property, may make income a separate subject of taxation, there is serious doubt of its power to impose a tax on income derived from the mining of one kind of ore, or from the development of one kind of natural wealth, and exempt from its operation income derived from the mining of some other kind of ore, or from the development of some other kind of natural wealth, if indeed it can impose a tax on income at all unless the tax applies alike to all income regardless of its source. Attention is called to this phase of the question in order that it may be given such consideration as its importance seems to warrant.

Reduction in the Ad Valorem Tax Base

Iron ore is now taxable at 50 per cent of full value, while urban property is taxable at 40 per cent, and farm property at 33⅓ per cent of full value. This difference in taxable value means that the tax burden on iron ore is 25 per cent greater than on urban property, and 50 per cent greater than on farm property, so that in effect, we already impose a super-tax on iron ore. Should it be the policy of the state to substitute a net profit tax for the ad valorem tax for all state purposes, we believe the super-tax should be included in the percentage rate imposed on net profits, rather than in the ad valorem tax base. We therefore suggest that if a change should be made to the net profit system, the taxable value of iron ore should be reduced from 50 per cent to 33⅓ per cent of full value in order that it may be on the same tax base as other property in the state not used for urban purposes.

While it may be urged that the suggested reduction in the percentage of taxable value of iron ore would mean a considerable loss in the tax receipts of counties and local districts in the mining sections of the state, it is not believed that such reduction would result in depriving them of needed public revenues with which to defray all necessary expenses of county and local governments. Even at 33⅓ per cent nearly all of the local districts in the mining sections would have a much larger total taxable value than other like dis-

tricts of equal population in other parts of the state. Of course mining districts are confronted with many unusual problems not found in non-mining districts, so that in order to meet conditions peculiar to mining districts, the latter must have relatively larger revenues than the former. However, admitting their greater needs, we believe a reduction in the ad valorem tax base would not seriously curtail their necessary public revenues. Many of them, if necessary, could offset the reduction by increasing the rate of tax levy.

But there are other considerations than that of not imposing a double super-tax on iron ore why it would be in the interest of sound public policy to reduce the tax base to 33⅓ per cent. With a net profit tax on output substituted for the ad valorem tax for all state purposes, and a reduction in the ad valorem tax base for county and local purposes, a substantial reduction would be made in the tax burden on reserve ores, thus tending to conservation, and on low grade ores during the period of experimentation in the endeavor to make such ores merchantable. Then, too, such reduction would be an incentive to increased activity in exploring for new ore bodies because of the lessening of the tax burden on the new discoveries until ready to be mined. We believe that the advantages to be gained from the conservation of reserve ores, the increase in the value of low grade ores that may be reasonably expected if experimentation is encouraged, and possible new ore discoveries will eventually more than compensate for any present loss arising from a reduction in the local ad valorem tax base.

The Question of a Trust Fund

There is considerable sentiment in favor of creating a trust fund out of any additional tax or super-tax that may be imposed on iron ore. It is contended that if such property should be taxed on a higher basis than other property because of the natural heritage and diminishing value theories, then that part of the tax representing the natural heritage element should be made a trust fund, for if it is a heritage, it is as much a heritage of future generations as of the present generation.

While there is a considerable difference of opinion as to the wisdom of building up large trust funds, the state, at the very beginning of its history, inaugurated the policy of creating trust funds for certain specified purposes, and that policy has been continued up to the present time. On June 30th of the present year these trust funds amounted to a total of $42,961,648 of which amount

$30,920,033 was in the permanent school fund, $1,978,191 in the permanent university fund, $2,906,270 in the internal land improvement fund, and $7,157,154 in the swamp land fund.

But regardless of the wisdom of the policy of creating public trust funds, it is very questionable whether the present state constitution authorizes the legislature to create and build up a trust fund out of the proceeds of a general or specific tax on any class of property. Even if it has such power, there would be no assurance of the permanency of such fund, for any subsequent legislature could repeal the law and distribute the fund in any public manner it might determine. It would therefore be necessary, if it were deemed wise to create a trust fund out of the proceeds of an additional or super-tax on iron ore, to amend the state constitution if the permanency of such fund is to be definitely assured.

Conclusions

In concluding this chapter it may not be inappropriate to say that we feel we have been reasonably successful in the past in the somewhat difficult task of equitably valuing the known mineral deposits of the state for purposes of taxation. Iron ore has no taxable value, nor has any other property for that matter, until it is discovered. We cannot look into the ground and determine whether or not a given description of land contains iron ore. Ore bodies can only be definitely located through drillings or other forms of exploration. But when they are definitely located and defined, we can, under the system used by the commission, appraise their values for purposes of taxation with probably as much accuracy as we can appraise the taxable values of farm and city realty.

While we believe it would be feasible so far as state taxes are concerned, if constitutional, to substitute a net profit tax on mined iron ore for our present ad valorem method of taxing mineral property, the members of the tax commission are not in entire agreement as to the wisdom and expediency of making such a change at this time. Many arguments of considerable force can be made in favor of either the ad valorem or net profit method of mine taxation. Neither method, however, is entirely free from criticism and objection, and both present administrative difficulties. With the information here made available, we believe the members of the legislature are as competent as are the members of this commission to determine whether or not a change in the present ad valorem method of taxing iron ore is desirable. The tax commission will endeavor to administer faithfully and impartially any tax law that may be enacted

by the legislature, regardless of whether or not its individual members are personally in harmony with the principles embraced in the law.

There are some points, however, that we desire to particularly emphasize if it should be decided to change to the net profit method of mine taxation. Not the least important consideration in any taxing system is that of ease and certainty of administration. While the underlying principle of a taxing system may be good, the application of the principle may be so intricate and difficult as to render the system undesirable. It is a well recognized principle in taxation that the amount of the tax should be fixed with reasonable certainty, and not left to individual caprice or whim. The taxpayer is entitled to know what contributions will be required of him for the support of government, and while it is not always possible to determine definitely in advance the exact amount of such contributions, it is possible to fix the amount with measurable certainty.

Because of the importance of ease of administration and certainty of the amount of the tax, it is highly desirable that the provisions for determining net profits for purposes of taxation be clearly and definitely stated in the law. The items of expense that are to be included in the amount to be deducted from the market value of the ore in arriving at net profits should be set forth in detail. Unless such deductions are carefully enumerated, the administration of the law will be difficult because open to constant dispute, and possible litigation, as to what items of expense should be included in deductible mining costs.

While we make no definite recommendation as to the desirability or expediency of imposing a tax on the net profits derived from the mining of iron ore, if such a law should be enacted we unhesitatingly recommend:

1. That the tax imposed under the law be in lieu of all other state taxes on mineral property.

2. That the taxable value of iron ore for county and local purposes be reduced from 50 per cent to 33⅓ per cent of true and full value.

3. That the method of determining net profits for purposes of taxation be definitely fixed in the law.

In conclusion, we believe it would be in the interest of sound and wise public policy if the so-called tonnage tax question could be settled in some way with reasonable assurance of permanency. Millions of dollars of capital have already been invested in the mining

industry, and millions more will have to be invested in the future, if the immense deposits of low grade and magnetic ores to be found within our borders are to be made a merchantable commodity. It is only fair to the people who are investing such large amounts in developing our mining industry that the method of taxing the values arising from such investments be fixed with some reasonable assurance of future permanency. In many cases large investments in development work must be made long in advance of any returns from active mining operations. If the people who are making these investments feel that the method of taxing them may be changed, perhaps before they begin to receive returns, there is grave danger of seriously discouraging further investments in mining enterprises in our state. A settled taxing system is therefore not only desirable, but almost imperative if we are to reap full fruition from the great mineral deposits with which our state has been so richly endowed.

It is scarcely necessary to add that if any change should be made in our present method of taxing iron ore, the effect of such change on the mining industry, both present and future, should be carefully considered, and that while the probable amount of public revenue to be expected from the tax should also be carefully considered, the new law should be framed in a spirit of absolute fairness and justice, economically and industrially, to every section and every interest of the state.

Taxation of Mines and Minerals

BEING CHAPTER VI OF THE
SEVENTH BIENNIAL REPORT

OF THE

Minnesota Tax Commission

1920
ST. PAUL, MINNESOTA

CHAPTER VI

MINES AND MINERALS

In the previous biennial reports of this commission, considerable space has been devoted to technical information relating to the geology, chemistry and metallurgy of the iron ore deposits of Minnesota, as well as the basic principle upon which such property is valued for purposes of taxation. It therefore seems unnecessary to again repeat it in this report. However, in order that such information may be readily available, we are including herein a brief resumé of our previous reports on these subjects.

Iron Ore in General

Iron is the most abundant and the cheapest metal in the world. It nowhere exists in the pure state in commercial quantity but is always found as an iron ore or as an iron ore material, and if the latter, of such character as to be commercially converted or concentrated by the proper methods of beneficiation into an iron ore of merchantable grade. The principal ores of iron are, carbonates, magnetites, hematites, and limonites. To be theoretically pure, these ores would have to contain metallic iron of the following percentages: carbonate, 48.2 per cent; magnetite, 72.40 per cent; hematite, 70 per cent; limonite, 59.9 per cent, if a hydrated oxide.

Iron ores are deposited within rock walls or basins, in layers, troughs, pockets, or lenses, with intermediate intrusive layers of rock and lean material which must be mined and removed in order to recover the ore.

The iron ores of the central Mesabi Range are hematite of an earthy structure, found deposited in layers in rock basins or troughs and bottomed in quartzite.

The ores of the western Mesabi Range in Itasca county are also of hematite and found deposited in basins or troughs similar to the central Mesabi Range ores only with intervening layers of sand, and they are known as "wash ore material," for this material must be converted into an iron ore concentrate by passing through a wash plant to have the sand removed.

The ores of the eastern Mesabi Range beginning, practically, with the line separating St. Louis and Lake counties, are magnetite, and the iron has been so closely banded or sprinkled in the formation as to be the formation itself. There are a great many hundreds of millions of tons of this material which may result in a very large future ore reserve if a very extensive and costly experiment, now underway, proves to be a commercial success. This material will have to be mined by open quarry methods, the product crushed and ground, the iron recovered by magnetic separation and the finely powdered iron concentrate would be merchantable only after going through the intense heat of a nodulizing or sintering oven. This process smelts the particles of powdered concentrates of iron ore into forms of nodules or lumps of sufficient size and weight for blast furnace use.

Such a thing as an iron ore deposit of a clean, straight grade does not exist. The various layers of ore have been created in different geological periods and they differ in metallic richness; there are layers of Bessemer ore and also of non-Bessemer ore in the same deposit, and each mine must be considered on its own operating basis. The general average grade or grades must be ascertained and the mining of the property conducted by mixing the various ores to maintain the general average grade as established. Hence, mining the ore in various parts of the property is necessary to maintain the desired standard. If only the high grade ore was mined and the medium and low grade ore left behind, the remainder of the deposit would soon be non-merchantable.

The ores of the Vermilion Range are hematite and of hard structure and are found in deeply pitched lenses and contained within rock walls. The ores of the Cuyuna Range are largely limonite or hydrated oxide, and are found in lenses or chimneys contained within rock walls. As the ores have not received a secondary enrichment, the merchantable ores seem to be all on top and the percentage of iron diminishes with depth until it disappears within and becomes "iron ore formation."

Iron is always physically, structurally, and chemically combined with other elements, such as oxygen, hydrogen, silica, alumina, phosphorus, lime, magnesia, manganese, sulphur, chromium, nickel, titanium, water, etc. These are all refractory impurities and give no metallic weight value in the pig iron produced, and the elimination of which forms the principal cost of reducing the iron ore to metal-

lic iron in the production of pig iron. All iron ore must go through a blast furnace to be reduced to metallic iron and then cast into what is known as pig iron, for either subsequent use for fabrication into iron products or for conversion into steel and its subsequent fabricated products. The establishment of blast furnace value is the primary governing factor of determining whether any iron has a commercial market value. Complete chemical analyses and furnace tests are constantly necessary. Some of the elements mentioned as contained in iron ore are so refractory that any excess would make such ores non-merchantable. For example, an ore containing an excess of sulphur could not be used by a blast furnace unless the sulphur could be removed by roasting.

Outside of the iron ores shipped from Minnesota, Michigan and Wisconsin, the rest of the United States produces yearly a total of about 10,000,000 tons mined principally in the states of Alabama, New York, Pennsylvania, New Jersey, Virginia, Tennessee, and Georgia.

About 1,000,000 tons of iron ore are imported yearly, principally from Cuba, Sweden, Chili, Canada, Spain, and French Africa.

In order to purify the ore and convert it into metallic iron, for use in iron and steel plants, it is shipped to blast furnaces, and, for convenience in storage and shipping is there cast into molds known as "pig iron." The total number of blast furnaces in the United States on January 1, 1920, was 453. The location and number of 402 of these blast furnaces were as follows: Pennsylvania, 165; New York, 27; Ohio, 79; Indiana, 16; Illinois, 25; Michigan, 12; Alabama, 44; Virginia, 18; Tennessee, 16.

In a modern, up-to-date blast furnace and steel plant, molten metallic iron may be conveyed from the furnace to the steel plant and converted directly into steel.

Depending upon the percentage of phosphorus therein, all iron ore is classed as Bessemer or non-Bessemer (basic). If the pig iron produced can be converted into steel to contain not more than .1 per cent phosphorus by the acid Bessemer process, then the ore is of Bessemer grade and receives a Bessemer market price, and that price will depend upon whether it is the hard Bessemer ore of the Vermilion and Old Ranges of Michigan, with a lower price, if it is the earthy Bessemer ore of the Mesabi Range. The acid Bessemer process of steel-making in America cannot eliminate phosphorus,

hence the reason for the Bessemer standard in ore which limits the amount of phosphorus in any ore to qualify it as Bessemer grade.

The trade standard for Bessemer ore, and upon which the market price at Lower Lake docks is based, is an ore of natural iron 55 per cent, dry phosphorus .045 per cent which, with a moisture of 10 per cent, is equivalent to an ore of dry iron 61.11 per cent.

The basic open hearth American process of steel making can reduce or, at high cost, eliminate phosphorus, while all ores that are not of Bessemer grade go into non-Bessemer class.

The trade standard for non-Bessemer ore, and upon which the market price at Lower Lake docks is based, is an ore of natural iron 51.50 per cent, which, with the moisture of 12 per cent, is equivalent to an ore of dry iron 58.52 per cent.

The hard non-Bessemer ores of the Vermilion and the Old Ranges of Michigan receive a higher price than the earthy ores of the Mesabi Range. The reason for these differentials in prices is that in using the earthy ores of the Mesabi, there is considerable furnace loss through flue dust and explosions which blow out into the air quite a weight of fine material.

When the yearly market prices are established for each grade of Bessemer and each grade of non-Bessemer ore delivered at Lower Lake docks, a base unit value per ton for each grade is determined. From this is calculated the market price of Bessemer ores above or below the base standard of natural iron 55 per cent, and of non-Bessemer ores above or below the base standard of natural iron 51.50 per cent.

Exploration for Iron Ore

It is very fortunate for Minnesota that its iron ore has been so deposited that through exploratory diamond and churn drilling the ore bodies can be definitely determined, the extent of the deposits definitely known and the tonnage and its grade accurately measured and determined. Every five feet of drilling is chemically analyzed, the depth of each ore layer and of each intervening layer of paint rock and of taconite is measured, and the amount and grade of each layer of merchantable iron ore and of non-merchantable ore material with its grade, accurately calculated. Nowhere in the world has drilling exploration reached the perfection that has been estab-

lished in Minnesota, especially on the Mesabi Range. It is a generally accepted standard of use in the purchase, sale and lease of mineral deposits.

All of the operating companies and fee owners readily place at the disposal of the commission, all of the data concerning their exploration drilling and development work of all open pit and under-ground mines and ore reserves in the state. The commission is very fortunate in having at its disposal as its consulting mining engineer, the School of Mines of the University of Minnesota, to examine and verify all of the tonnage, grade, exploration, development and shipping data. Dean Wm. R. Appleby and Professors Lambert and Carlson now in charge of the work, have rendered valuable service in examining, verifying and measuring a total now amounting to over 2,000,000,000 tons. Some properties have had several examinations.

Calculating the Ad Valorem Value

One naturally thinks of iron ore as being worth, say, $5.25 per ton, but that is the worth or market value of the ore delivered at Lower Lake docks. It costs, however, approximately $4.00 per ton to mine and deliver the ore, so that the difference of $1.25, is really what a given ore is worth in Minnesota.

Guided by the past as to prices, costs and production, and using the law of general average over a standard statistical period of, say ten years, one can safely assume a general average future market price for an ore of a given grade, and also a general average future cost of production and delivery, to arrive at future operating profits. Estimating the ore exhaustion period and applying a fair rate of discount, we obtain the present value per ton, then the total present full value of the entire tonnage, and 50 per cent thereof is taken as the taxable value of the same.

To show how closely this method checks out and obtains accurate results, by reference to the tables it will be noted that the general average full value per ton in 1919 of all the active and reserve tonnage of iron ore was 41 cents. This amount is equivalent to a general average of approximately $1.25 per ton discounted at 7 per cent for 40 years, or 8 per cent for 35 years. Fifty per cent of that amount (41c) is 20.5 cents, the general average of assessed value per ton for all known developed merchantable iron ore. When the general raise of 5 per cent was made on unmined iron ore in the

mineral equalization of 1920, the general average present full value was raised to 43.05 cents per ton and this is equivalent to $1.25 per ton discounted at 7½ per cent for 35 years. This resulted in raising the present general average assessed value to 21.5 cents per ton.

In arriving at the general average operating profit per ton, exclusive of royalty, it should be understood that quite a number of mines containing low grade ores are operated at a loss. A number of mines break even or show only a fair profit, while other mines of high grade ores operate at a very fine profit, but combined, all of the properties show the general average as stated. This is caused to a large extent, by the general practice of mixing, blending, and shipping ores from various mines and selling and using them under a blended name. Value, taxable and otherwise, is thus given to a very large quantity of low grade ore that of itself is non-merchantable. Profits and value of high grade ores are thus equalized with the losses on low grade ores to give a general average profit to their combined mixture.

This ad valorem value method as created and developed in 1907 by the Minnesota Tax Commission, is the only logical basis for an operator to determine the equity of value as represented by the net operating profit per ton to determine an appraisal for any purpose, such as capitalization, bond and mortgage, etc.

On the Mesabi and Cuyuna Ranges there is a large tonnage of low grade iron ore or ore material which cannot now be considered as merchantable. Fortunately metallurgy is not a fixed science, and it may be that when the time comes in the distant future, and when it is most needed, metallurgy will discover the proper process of converting this low grade material into a product for commercial use. The commission has the records of location and exploration drill data of deposits containing a total of some 200,000,000 tons of low grade iron ore and ore material.

The magnetic attraction is so strong in the counties in the northern part of the state, such as Otter Tail, Crow Wing, Cass, Morrison, St. Louis, Itasca, etc., that there is every reason to believe that when the time comes for their need, explorations will develop new deposits of iron ore, possibly in large quantities.

Cuyuna Iron Ore in General

The Cuyuna iron ores are of a cherty structure. They are good furnace ores and they take the Mesabi non-Bessemer price. However, they are hard to sell on the open market because of their high

phosphorus content. They enter largely in competition with the high phosphorus ores of the Menominee and Marquette Ranges of Michigan which can be marketed at a saving of some 45 cents per ton in rail and vessel freights. On this account alone, great consideration has to be shown in assessing ores of the Cuyuna Range. Many of its tonnages, approximately 20,000,000 tons, have been reduced to nominal assessed values until such time as the trade is ready to use them.

Manganiferous Iron Ore

As stated in previous reports, there is no known manganese ore in the state. There is, however, on the Cuyuna Range, a number of deposits of manganiferous iron ore material, and in various iron ore deposits opened up for shipping, there is mixed in a quantity of low grade or maganiferous material. Small quantities of the latter are shipped along with the iron ore and used in a blast furnace to make an easy running furnace slag. During the World War when there was a great scarcity of manganese material, there was a temporary and emergency use for the manganiferous ore of the Cuyuna Range for producing spiegeleisen, and during this time there was considerable tonnage shipped from a few of the Cuyuna properties. The close of the war, however, ended the immediate demand for such material. The present and future value of these manganiferous ores is somewhat doubtful, and for the time being at least, the tax commission has reduced their assessed value to the nominal amount of 3 cents per ton.

Minnesota Resources in the World War

It is very startling to contemplate the great part Minnesota's wheat and flour had in feeding the allied nations during the war. The great tonnage shipments of iron ore from Minnesota during the five year period, 1915-1919, show what a great part the state had in contributing its iron ore for the desperate needs for iron and steel of the Allies, as well as taking care of the urgent emergency needs for domestic use.

STANDARD CLASSIFICATION OF IRON ORES

TABLE 1,

Active Mine Tonnage	
Class 1.	Open pit, low mining cost, high grade ore.
Class 2.	Open pit, moderate mining cost, medium grade ore.
Class 3.	Open pit, high mining cost, mixed grade ore.
Class 4.	Underground, low mining cost, high grade ore.
Class 5.	Underground, moderate mining cost, medium grade ore.
Class 6.	Underground, high mining cost, mixed grade ore.

TABLE 2.

Reserve Tonnage

Class 1. Undeveloped reserve ore of active mines.
Class 2. Undeveloped reserve ore of active mines.
Class 3. Undeveloped reserve ore of active mines.
Class 4. Partially developed and stripped, high grade ore.
Class 5. Partially developed, not stripped, medium grade ore.
Class 6. Partially developed, not stripped, mixed grade ore.

TABLE 3.

Classified Assessed Value Mine and Reserve Rates per Ton

CLASS	Rates per Ton 1907-1908		Rates per Ton 1909		Rates per Ton 1910-1911		Rates per Ton 1912-1913		Rates per Ton 1914-1919		Rates per Ton 1920	
	Mine Cents	Reserve Cents	Mine Cents	Reserve Cents	Mine Cents	Reserve Cents	Mine Cents	Reserve Cents	Mine Cents	Reserve Cents	Mine Cents	Reserve Cents
1	33	..	33	21	34.65	22.05	36.38	23.15	38.20	24.31	40.11	25.52
2	30	..	30	18	31.50	18.90	33.08	19.85	34.73	20.84	36.44	21.84
3	27	15	27	15	28.35	15.75	29.77	16.54	31.26	17.36	32.86	18.27
4	23	..	23	11	24.15	11.55	25.36	12.13	26.63	12.73	27.93	13.33
5	19	10	19	10	19.95	10.50	20.95	11.03	21.99	11.58	23.10	12.18
6	14	8	14	8	14.70	8.40	15.44	8.82	16.21	9.26	17.01	9.77

TABLE 4.

Classified Full and True Value Mine and Reserve Rates per Ton

CLASS	Rates per Ton 1907-1908		Rates per Ton 1909		Rates per Ton 1910-1911		Rates per Ton 1912-1913		Rates per Ton 1914-1919		Rates per Ton 1920	
	Mine Cents	Reserve Cents	Mine Cents	Reserve Cents	Mine Cents	Reserve Cents	Mine Cents	Reserve Cents	Mine Cents	Reserve Cents	Mine Cents	Reserve Cents
1	65.5	....	65.5	41.7	69.0	43.9	72.6	46.2	76.4	48.6	80.22	51.04
2	59.5	....	59.5	35.7	62.6	37.5	65.9	39.5	69.4	41.6	72.88	43.68
3	53.6	29.8	53.6	29.8	56.4	31.3	59.4	33.0	62.5	34.7	65.72	36.54
4	45.6	....	45.6	21.8	48.0	22.9	50.5	24.1	53.2	25.4	55.86	26.66
5	37.7	19.8	37.7	19.8	39.7	20.8	41.8	21.9	44.0	23.1	46.30	24.26
6	27.6	15.9	27.9	15.9	29.0	16.7	30.5	17.6	32.14	18.5	34.02	19.54

The ratio of assessed to full and true value per ton is as follows: For 1907, 1908, and 1909, 43.20 per cent; for 1910 and 1911, 45.36 per cent; for 1912 and 1913, 47.63 per cent, and for 1914-1920 inclusive, 50 per cent.

Mineral Equalization

The following is a summary of the equalization of the assessment of mineral realty values for 1906 as equalized by the state board of equalization and for 1907-1920, inclusive, as equalized by the tax commission. Therein appears: (1) the total taxable value of the tonnage and of approximately $5,000,000 total per annum of assessed value of mineral lands; (2) the remaining taxable tonnage; (3) the yearly shipments. It will be noted that the assessment of iron ore in

stock pile, assessed as personal property, is not included in the table. Prior to 1917, the assessed value of ore in stock piles averaged approximately $3,000,000 per annum. For stock piles of subsequent years see pages 14 and 16.

General Summary of the Mineral Equalization, Mesabi and Vermilion Ranges, in St. Louis, Itasca and Lake Counties.

Year.	Shipments Tons.	Remaining Tonnage.	Assessed Valuation. Total Assessed Value of Tonnages.	Assessed Valuation. Tonnages and Mineral Lands Combined.
1906	25,611,384	.....	.....	$64,486,409
1907	29,180,975	1,191,969,757	$186,085,290	191,706,682
1908	18,098,894	1,193,188,959	174,263,632	180,210,693
1909	29,284,495	1,310,190,194	199,008,838	204,526,139
1910	30,413,963	1,347,596,291	220,423,038	224,669,845
1911	23,368,719	1,367,457,803	231,617,049	235,771,506
1912	33,892,390	1,401,340,743	254,002,774	259,418,277
1913	35,505,243	1,406,499,614	254,581,598	259,987,396
1914	22,524,919	1,397,717,105	263,040,232	268,396,128
1915	31,457,423	1,392,969,927	261,456,295	266,820,777
1916	44,488,541	1,388,762,461	267,855,425	272,531,287
1917	42,975,903	1,386,291,353	284,510,127	289,060,003
1918	41,589,619	1,368,196,337	285,781,583	287,636,463
1919	32,926,748	1,336,094,811	276,546,189	277,645,300
*1920	37,443,028	1,310,927,426	281,512,735	283,082,471
Total	478,762,244			

Cuyuna Range in Crow Wing County.

Year.	Shipments Tons.	Remaining Tonnage.	Assessed Valuation. Total Assessed Value of Tonnages.	Assessed Valuation. Tonnages and Mineral Lands Combined.
Prior	1,186,401	.....	.....	.....
1914	868,073	70,857,865	$5,940,527	$6,008,577
1915	1,137,368	72,215,605	5,711,739	5,781,389
1916	1,705,365	77,585,593	6,228,306	6,365,746
1917	2,422,884	69,277,417	6,807,023	7,066,291
1918	2,978,800	62,514,960	6,562,418	7,466,427
1919	1,859,865	58,828,640	4,073,558	4,464,511
1920	2,127,168	24,275,570	3,010,618	3,453,405
Total	9,447,259			

Grand Totals.

Year.	Shipments Tons.	Remaining Tonnage.	Assessed Valuation. Total Assessed Value of Tonnages.	Assessed Valuation. Tonnages and Mineral Lands Combined.
Prior.....	226,642,464	.....	.....	.....
1914.....	23,392,992	1,468,574,970	$268,980,759	$274,404,705
1915.....	32,594,791	1,465,185,532	267,168,034	272,602,166
1916.....	46,193,906	1,466,348,054	274,083,731	278,897,033
1917.....	45,398,787	1,455,568,770	291,317,150	296,126,032
1918.....	44,068,419	1,430,711,297	292,344,001	295,102,890
1919.....	34,786,613	1,394,923,451	280,619,747	282,109,811
*1920.....	39,570,196	1,335,202,996	284,523,353	286,535,876
Total.....	492,548,942			

*Includes 4,818,833 tons and $1,927,532 value of reserve ore in stock pile.

The following table shows the amount of taxes levied by the state for state purposes on mines and mineral properties in 1906, the year before the tax commission was created, and for each subsequent year:

State Taxes from Iron Ore and Mineral Properties.

1906.....	$179,272
1907.....	671,489
1908.....	604,264
1909.....	576,174
1910.....	609,984
1911.....	919,643
1912.....	933,193
1913.....	1,291,081
1914.....	1,314,538
1915.....	1,107,878
1916.....	1,033,435
1917.....	1,499,875
1918.....	1,056,441
1919.....	2,328,322
1920.....	1,607,491
Total.....	$15,733,080

The following tables show cargo analyses of shipments for each season from 1907 to 1919. Large quantities of the lower grades of Mesabi Bessemer and non-Bessemer ores are used in mixtures with ores of higher grades which has resulted in reducing the grade of the shipments under the standards of Bessemer natural iron 55 per cent, and of non-Bessemer natural iron 51.50 per cent. This, however, gives value, both market and taxable, to ore that otherwise would be non-merchantable.

General Average Cargo Analyses.

1. Bessemer Ore.

	Vermilion Range Natural Iron %	Dry Phos. %	Mesabi Range Natural Iron %	Dry Phos. %
1907	60.14	.038	54.07	.045
1908	60.44	.039	54.01	.044
1909	60.32	.039	53.26	.045
1910	60.11	.037	53.36	.046
1911	59.59	.038	52.92	.046
1912	59.31	.038	53.25	.047
1913	58.81	.039	53.26	.044
1914	58.48	.039	52.58	.045
1915	57.94	.039	52.90	.043
1916	57.68	.040	53.10	.046
1917	58.06	.039	53.17	.044
1918	57.61	.040	53.65	.044
1919	58.26	.039	53.74	.044

2. Non-Bessemer Ore.

1907	63.94	....	51.46	....
1908	61.22	....	50.84	....
1909	61.24	....	49.85	....
1910	60.25	....	49.75	....
1911	59.60	....	49.49	....
1912	58.78	....	49.49	....
1913	58.63	....	49.34	....
1914	58.80	....	49.59	....
1915	58.39	....	49.54	....
1916	58.81	....	49.19	....
1917	57.89	....	50.22	....
1918	59.10	....	50.19	....
1919	60.19	....	50.35	....

During the years 1907-1920, inclusive, there was shipped from the Vermilion Range approximately 77 per cent of Bessemer ore and 23 per cent of non-Bessemer ore, and from the Mesabi Range 45 per cent of Bessemer ore and 55 per cent of non-Bessemer ore.

Conclusion

On the following pages will be found the customary comparative tables showing the equalized assessments for the years 1917-1918 and 1919-1920, together with a detailed statement of the tonnages and assessments of the mineral properties of the state as of May 1, 1920.

This chapter is concluded with the reports to the commission, of the work done during 1919 and 1920 by the consulting mining engineer, the School of Mines. To Dean Wm. R. Appleby and to Prof. E. M. Lambert and Associate Prof. A. J. Carlson, mining engineers of the school, we express our appreciative thanks for the very valuable services rendered the state.

Comparative Statement of the Tonnages of Merchantable Iron Ore in Minnesota in 1917 and 1918, Showing the Assessed Value of the Same, the Assessed Value of Surface, including Structures and Improvements and Other Miscellaneous Assessments Connected with the Mining Industry.

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ORE IN GROUND

County	May 1, 1917 Tonnage	May 1, 1917 True and Full Value	May 1, 1917 Assessed Value	May 1, 1918 Tonnage	May 1, 1918 True and Full Value	May 1, 1918 Assessed Value
St. Louis	1,227,883,575	$530,231,856	$265,115,928	1,211,778,954	$532,852,840	$266,426,420
Itasca	158,151,458	37,952,096	18,976,048	156,267,383	38,630,526	19,315,263
Crow Wing	69,277,417	13,291,914	6,645,957	62,514,960	13,124,836	6,562,418
Lake	256,320	136,492	68,246	150,000	79,800	39,900
Total	1,455,568,770	$581,612,358	$290,806,179	1,430,711,297	$584,688,002	$292,344,001

ORE IN STOCK PILES

St. Louis	6,874,375	$6,638,188	$3,319,094	5,911,051	$14,002,610	$7,001,305
Itasca	472,985	160,872	80,436	401,820	998,494	499,247
Crow Wing	882,431	911,694	455,847	693,628	1,416,624	708,312
Lake	77,399	154,798	77,399	19,288	57,444	28,722
Total	8,307,190	$7,865,552	$3,932,776	7,025,787	$16,475,172	$8,237,586

TOTAL TONNAGES AND ASSESSMENTS OF ORE IN GROUND AND STOCK PILE

St. Louis	1,234,757,950	$536,870,044	$268,435,022	1,217,690,005	$546,855,450	$273,427,725
Itasca	158,624,443	38,112,968	19,056,484	156,669,203	39,629,020	19,814,510
Crow Wing	70,159,848	14,203,608	7,101,804	63,208,588	14,541,460	7,270,730
Lake	333,719	291,290	145,645	169,288	137,244	68,622
Total	1,463,875,960	$589,477,910	$294,738,955	1,437,737,084	$601,163,174	$300,581,587

ASSESSMENTS OTHER THAN MERCHANTABLE ORE

May 1, 1917.

	Surface, Structures and Improvements		Mineral Prospects	
	True and Full Value	Assessed Value	True and Full Value	Assessed Value
St. Louis	$2,417,646	$805,882	$671,036	$335,518
Itasca	271,491	90,497	28,774	14,387
Crow Wing	777,018	259,006	322,132	161,066
Lake	3,600	1,200	.....	.....
Morrison	2,424	808	.....	.....
Aitkin	3,648	1,216	2,400	1,200
Total	$3,475,827	$1,158,609	$1,024,342	$512,171

ASSESSMENTS OTHER THAN MERCHANTABLE ORE

May 1, 1918.

St. Louis	$1,354,420	$677,210	$2,664,438	$888,146
Itasca	129,158	64,579	615,435	205,145
Crow Wing	1,032,700	516,350	1,162,977	387,659
Lake	.....	.....	59,400	19,800
Morrison	.....	.....	3,576	1,192
Aitkin	.....	.....	5,859	1,953
Total	$2,516,278	$1,258,139	$4,511,685	$1,503,895

GRAND SUMMARY

	May 1, 1917			May 1, 1918		
County	Tonnage	True and Full Value	Assessed Value	Tonnage	True and Full Value	Assessed Value
St. Louis	1,234,757,950	$539,958,726	$269,576,422	1,217,690,005	$550,874,308	$274,993,081
Itasca	158,624,443	38,413,233	19,161,368	156,669,203	40,373,613	20,084,234
Crow Wing	70,159,848	15,302,758	7,521,876	63,208,588	16,737,137	8,174,739
Lake	333,719	294,890	146,845	169,288	196,644	88,422
Morrison	.....	2,424	808	.....	3,576	1,192
Aitkin	.....	6,048	2,416	.....	5,859	1,953
Total	1,463,875,960	$593,978,079	$296,409,735	1,437,737,084	$608,191,137	$303,343,621

Comparative Statement of the Tonnages of Merchantable Iron Ore in Minnesota in 1919 and 1920, Showing the Assessed Value of the Same, the Assessed Value of Surface, Including Structures and Improvements and Other Miscellaneous Assessments Connected with the Mining Industry.

ORE IN GROUND

County	May 1, 1919 Tonnage	May 1, 1919 True and Full Value	May 1, 1919 Assessed Value	May 1, 1920 Tonnage	May 1, 1920 True and Full Value	May 1, 1920 Assessed Value
St. Louis	1,180,822,166	$514,731,832	$257,365,916	1,155,321,044	$520,407,632	$260,204,446
Itasca	155,195,645	37,339,522	18,669,761	150,707,549	37,806,610	18,903,305
Crow Wing	58,828,640	7,596,416	3,798,208	24,275,570	4,318,290	2,159,145
Lake	77,000	39,900	19,950	80,000	10,000	5,000
Total	1,394,923,451	$559,707,670	$279,853,835	1,330,384,163	$562,542,532	$281,271,896

ORE IN STOCK PILES.

St. Louis	3,978,380	$11,649,588	$5,824,794	10,153,826	$22,920,502	$11,460,251
Itasca	340,110	861,266	430,633	589,990	2,132,044	1,066,022
Crow Wing	564,803	1,041,798	520,899	544,389	1,307,970	653,985
Lake	29,110	102,186	51,093	2,170	4,540	2,270
Total	4,912,403	$13,654,838	$6,827,419	11,290,375	$26,365,056	$13,182,528

TOTAL TONNAGE AND ASSESSMENTS OF ORE IN GROUND AND STOCK PILE

St. Louis	1,184,800,546	$526,381,420	$263,190,710	1,165,474,870	$543,328,134	$271,664,697
Itasca	155,535,755	38,200,788	19,100,394	151,297,539	39,938,654	19,969,327
Crow Wing	59,293,443	8,638,214	4,319,107	24,819,959	5,626,260	2,813,130
Lake	106,110	142,086	71,043	82,170	14,540	7,270
Total	1,399,835,854	$573,362,508	$286,681,254	1,341,674,538	$588,907,588	$294,454,424

ASSESSMENTS OTHER THAN MERCHANTABLE ORE

May 1, 1919.

	Surface, Structures and Improvements		Miscellaneous Assessments	
	True and Full Value	Assessed Value	True and Full Value	Assessed Value
St. Louis	$2,615,136	$871,712	$851,206	$425,603
Itasca	622,797	207,599	129,918	64,959
Crow Wing	1,172,859	390,953	550,700	275,350
Lake	59,400	19,800	.....	.....
Total	$4,470,192	$1,490,064	$1,531,824	$765,912

ASSESSMENTS OTHER THAN MERCHANTABLE ORE

May 1, 1920.

St. Louis	$3,859,044	$1,286,348	$726,870	$362,805
Itasca	731,934	243,978	219,294	109,647
Crow Wing	1,328,361	442,787	1,702,946	851,473
Lake	118,230	39,410	.....	.....
Total	$6,037,569	$2,012,523	$2,649,110	$1,323,925

GRAND SUMMARY

	May 1, 1919			May 1, 1920		
County	Tonnage	True and Full Value	Assessed Value	Tonnage	True and Full Value	Assessed Value
St. Louis	1,184,800,546	$529,847,762	$264,488,025	1,165,474,870	$547,914,048	$273,313,850
Itasca	155,535,755	38,953,503	19,372,952	151,297,539	40,889,882	20,322,952
Crow Wing	59,393,443	10,361,773	4,985,410	24,819,959	8,657,567	4,107,390
Lake	106,110	201,486	90,843	82,170	132,770	46,680
Total	1,399,835,854	$579,364,524	$288,937,230	1,341,674,538	$597,594,267	$297,790,872

ST. LOUIS COUNTY

Name of Property	Description	Sec.	Tp.	R.	Tonnage	Assessed Value
Aurora Village—						
Fowler Mine	U. S. Lot 2	3	58	15	44,206	$43,143
Meadow Mine	SW-NE	3	58	15	68,635	6,702
Meadow Mine	U. S. Lot 3	3	58	15	166,404	84,036
Meadow Mine	U. S. Lot 4	3	58	15		
St. James Mine	NE-SW	3	58	15	4,230,391	1,221,602
St. James Mine	SW-SW	3	58	15	657,257	80,054
St. James Mine	SE-SW	3	58	15	479,952	58,458
Oliver Reserve	NW-SW	3	58	15	1,400,000	170,520
Oliver Reserve	NW-SE	3	58	15	250,000	30,450
Oliver Reserve	SW-NW	4	58	15	350,000	42,630
Mohawk Mine	NE-SW	4	58	15	542,043	299,234
Miller Mine	N½-SE	4	58	15	1,479,269	672,474
Aurora Reserve	SE-SW	4	58	15	458,555	44,778
	SW-SE	4	58	15		
Total					10,126,712	$2,754,081
Balkan Township—						
Palmer Mine	SE-SE	14	58	20	406,636	$113,573
Hartley-Burt Mine	NE-NE	23	58	20	5,798,172	1,619,430
Hartley-Burt Mine	NW-NW	24	58	20	8,286,269	2,314,354
Hartley Mine	NW-NE	23	58	20	3,883,708	1,084,719
Hartley Mine	NE-NW	23	58	20	1,998,380	558,147
Billings Mine	SW-NE	23	58	20	1,827,034	395,852
Billings Mine	SE-NE	23	58	20	1,489,239	324,717
Humphreys Mine	NW-NW	23	58	20	483,703	82,293
D'Autremont Reserve	E½-SW	23	58	20	4,854,961	887,001
Shenango Mine	NW-SW	23	58	20	1,877,150	292,508
	NE-NE	27	59	20		
Fraser Mine	NE-SE	23	58	20	3,709,300	630,932
Fraser Mine	NW-SE	23	58	20	9,855,564	1,676,431
Pontiac No. 1 Reserve	SW-SE	23	58	20	3,574,152	435,332
Pontiac No. 2 Reserve	SE-SE	23	58	20	4,999,361	608,922
Forster Reserve	W½-NE	24	58	20	7,125,924	1,212,120
	E½-NW	24	58	20		
Oliver Reserve	NW-SW	24	58	20	202,603	24,677
Burt Reserve	SW-SW	24	58	20	2,842,574	346,226
McGilvary Reserve	W½-NW	25	58	20	287,412	28,065
Oliver Reserve	NE-NE	26	58	20	359,087	35,063
Duncan Mine (S.L. No. 65)	SW-SW	26	58	20	580,609	38,077
	SE-SE	27	58	20		
Niles Reserve	W½-NE	27	58	20	7,668,031	748,783
	NW-SE	27	58	20		
Bruce Mine	NE-NW	27	58	20	2,315,865	226,144
Bruce Mine	SE-NW	27	58	20	4,209,207	411,029
Chester Mine	NW-NW	27	58	20	3,797,597	683,773
Pettit Reserve	SW-SE	27	58	20	1,656,919	161,799
Dunwoodie Mine	NE-SW	27	58	20	1,972,917	551,036
Dunwoodie Mine	NW-SW	27	58	20	4,671,395	1,304,721
Dunwoodie Mine	SW-SW	27	58	20	1,523,458	278,336
Dunwoodie Mine	SE-SW	27	58	20	2,856,496	797,819
Pillsbury Mine	SW-NE	29	58	20	1,034,881	138,001
Pillsbury Mine	SE-NW	29	58	20	1,906,879	532,501
	NE-SW	29	58	20		
Pillsbury Mine	NW-SE	29	58	20	983,769	131,186
Glen Mine	SE-NE	29	58	20	1,419,737	396,532
Alexandria-Snyder Mine	SW-SW	20	58	20	82,376	24,216
Alexandria Mine	SE-SW	29	58	20	986,353	332,826
Alexandria Mine	SW-SE	29	58	20	775,371	274,772
Total					102,273,219	$19,702,025
Biwabik Township—						
McKinley Mine	W½-NE	8	58	16	689,223	$192,500
	NE-NW	8	58	16		
	NW-SE	8	58	16		
Oliver Reserve	E½-SE	8	58	16	11,518,323	1,402,931
Corsica Mine	NE-SW	18	58	16	121,364	14,782
Corsica Mine	NW-SE	18	58	16	3,328,826	405,451
Corsica Mine	U. S. Lot 4	18	58	16	1,323,919	603,825
Oliver Reserve	NE-SE	18	58	16	177,849	21,662
Oliver Reserve	SE-SW	18	58	16	2,236,663	272,426
	U. S. Lot 5	18	58	16		
Oliver Reserve	U. S. Lot 2	19	58	16	1,310,779	159,653
Total					20,706,946	$3,073,230

Name of Property	Description	Sec.	Tp.	R.	Tonnage	Assessed Value
Biwabik Village—						
Bangor Mine	U. S. Lot 5	1	58	16	223,883	$9,403
Williams Mine	U. S. Lot 3	2	58	16	110,692	254,592
Biwabik Mine	U. S. Lot 4	2	58	16	1,496,539	545,264
Biwabik Mine	U. S. Lot 1	3	58	16	1,330,236	434,672
Biwabik Mine	SE-NE	3	58	16	1,321,304	481,417
Cincinnati Mine	SW-NW	2	58	16	788,113	182,054
Duluth Mine	U. S. Lot 2	3	58	16	80,525	13,697
Canton Reserve	SW-NE	3	58	16	2,500,000	304,500
Canton Reserve	U. S. Lot 3	3	58	16		
	U. S. Lot 4	3	58	16	600,000	73,080
	S½-NW	3	58	16		
Higgins Reserve	E½-SW	3	58	16	5,907,286	719,507
Ruddy Mine	NW-SW	3	58	16	82,400	19,034
Holland Mine	N½-SE	4	58	16	30,000	6,930
Belgrade Mine	NW-NE	9	58	16	574,950	407,731
Oliver Reserve	S½-NE	9	58	16	1,915,601	233,308
Oliver Reserve	SE-NW	9	58	16	134,507	16,383
Total					17,095,936	$3,751,572
Breitung Township—						
Soudan Mine	N½-SW	27	62	15		
	NW-SE	27	62	15	469,647	$468,791
	SE-NE	28	62	15		
	NE-SE	28	62	15		
Total					469,647	$468,791
Buhl Village—						
Dean Mine	W½-SE-NW	15	58	19	1,256,852	$351,039
Whiteside Mine	SW-NW	15	58	19	4,508,620	331,383
Itasca Mine	E½-SW	15	58	19	234,552	65,511
Kosmerl Reserve	W½-SW	15	58	19	10,153,740	1,236,726
Woodbridge Mine (S.L. 370)	S½-NE	16	58	19	143,904	14,911
Shiras Mine (S.L. 362)	S½-SW	16	58	19	454,599	138,793
Wanless Mine (S.L. 363)	NE-SE	16	58	19	2,313,905	567,158
Margaret Mine (S.L. 363)	W½-SE	16	58	19	899,534	251,239
Thorne No. 2 Mine	NE-SW	17	58	19	16,147	2,746
Wabigan Mine	NW-SE	17	58	19	1,136,692	212,860
Sharon Mine	SW-SE	17	58	19	8,030,348	1,467,145
Sharon Mine	NW-NE	20	58	19	6,962,440	1,272,038
Iron Chief Reserve	S½-SW	17	58	19		
	NW-NW	20	58	19	2,082,634	354,256
Wabigan Reserve	SE-SE	17	58	19	7,904,308	962,745
Culver Reserve	NE-NE	20	58	19	4,849,035	590,612
Grant Mine (S.L. 174)	NE-NW	20	58	19		
	S½-NW	20	58	19	5,480,481	1,530,698
Great Northern Reserve	NE-NW	21	58	19	603,955	58,976
Franta Mine (S.L. 365)	NW-NW	21	58	19	770,014	220,115
Total					57,801,760	$9,628,951
Chisholm Village—						
Alworth Reserve	E½-NE	22	58	20	6,906,928	$1,174,817
Twin City Reserve	NE-SW	22	58	20	1,134,658	193,005
Twin City Reserve	SE-SW	22	58	20	1,073,538	104,831
Crescent Reserve	U. S. Lot 3	22	58	20	1,709,033	208,160
Shenango Mine	NE-SE	22	58	20	108,839	205,968
Shenango Mine	SE-SE	22	58	20	119,071	14,503
South Myers Mine	SW-SE	22	58	20	4,269,912	726,312
Humphreys Mine	SW-NW	23	58	20	3,064,147	561,412
St. Clair Mine	SE-NW	23	58	20	2,590,116	440,579
Pillsbury No. 2 Reserve	SW-NW	27	58	20	323,272	49,449
Tioga Mine	U. S. Lot 1	28	58	20	187,391	123,969
Chisholm Mine	W½-NE	28	58	20	2,114,368	853,140
Clark Mine	S½-NW	28	58	20	388,853	108,607
Leonard Mine (Burt)	NE-SW	28	58	20	4,537,135	1,267,222
Leonard Mine	W½-SW	28	58	20	3,174,470	855,604
Wellington Mine	SE-SW	28	58	20	1,663,213	174,637
Monroe Mine	SE-NE	28	58	20		
	NE-SE	28	58	20	21,646,472	4,453,892
Monroe Mine	SE-SE	28	58	20	8,630,755	1,726,367
Tener Mine	NW-SE	28	58	20	8,881,385	1,776,499
South Tener Mine	SW-SE	28	58	20	1,818,000	171,800
Glen Mine	NE-SE	29	58	20	2,993,340	567,470
Glen Mine	SE-SE	29	58	20	550,845	73,455
Total					80,085,531	$16,431,707

Name of Property	Description	Sec.	Tp.	R.	Tonnage	Assessed Value
Ely City—						
Sibley Mine	U. S. Lot 1	27	63	12	257,208	$135,081
Pioneer Mine	SW¼	27	63	12	4,567,100	2,866,643
Zenith Mine	N½-SE	27	63	12	2,123,767	1,362,813
Chandler Mine	NE-SE	28	63	12	194,320	187,440
South Chandler Mine	SE-SE	28	63	12	219,655	237,583
Total					7,362,340	$4,789,560
Eveleth City—						
Nelson Reserve	E½-SW	30	58	17	35,506	$3,467
Nelson Reserve	U. S. Lot 4	30	58	17	180,934	17,670
Virginia Mine	U. S. Lot 3	30	58	17	1,058,670	103,379
Fault Mine	NE-NE	31	58	17	25,000	6,983
Aad Mine	SE-NE	31	58	17	50,565	30,843
Adams Mine (Adams)	W½-NE	31	58	17	11,071,900	3,637,709
	E½-NW	31	58	17		
Adams Mine (Nelson 40)	U. S. Lot 1	31	58	17	7,139,038	2,373,125
Adams Mine (Hull 40)	U. S. Lot 2	31	58	17	5,886,278	1,934,525
Adams Mine (Cloquet	NE-SW	31	58	17		
	U. S. Lot 3	31	58	17	21,062,300	7,067,866
	U. S. Lot 4	31	58	17		
	SE-SW	31	58	17		
Adams Mine (Spruce)	W½-SE	31	58	17	6,308,200	2,072,186
	E½-SE-SE	31	58	17	274,883	8,658
Total					53,113,294	$17,276,131
Fayal Township—						
Morrow No. 2 Mine	U. S. Lot 8	4	57	17	61,007	$20,050
Burns Mine	U. S. Lot 6-7	4	57	17	82,668	89,801
Burns Mine	U. S. Lot 12-13	4	57	17	102,312	102,688
Fayal No. 3 Mine	U. S. Lot 2	5	57	17	39,006	12,819
	SW-NE	5	57	17		
Fayal No. 3 Mine	N½-SW	5	57	17		
	SE-SW	5	57	17	2,955,658	971,377
	NW-SE	5	57	17		
	U. S. Lot 3	5	57	17	267,841	88,026
Fayal Fee Mine	SE-NW	5	57	17	2,025,198	665,581
Fayal Fee Mine	SW-SW	5	57	17	561,231	184,448
Fayal Fee Mine	U. S. Lot 4	5	57	17	633,599	208,622
Fayal No. 1 Mine	U. S. Lot 1	6	57	17		
	U. S. Lot 2	6	57	17	1,017,500	160,256
Fayal No. 1 Mine	SW-NW	5	57	17	3,793,726	1,434,628
Fayal No. 2 Mine	S½-NE	6	57	17		
	U. S. Lot 3	6	57	17	1,023,187	161,151
Fayal No. 4 Mine	SE-NW	6	57	17		
	SE¼	6	57	17	185,358	29,194
Fayal No. 4 Mine	NW-NW	8	57	17		
Oliver Reserve	U. S. Lot 4	6	57	17	524,800	63,921
	U. S. Lot 5	6	57	17		
Total					13,273,091	$4,250,562
Franklin Village—						
Higgins No. 2 Mine	SW-NW	4	58	17	1,030,210	$137,379
Higgins No. 2 Mine	SE-NW	4	58	17	1,197,183	334,374
McEwan Mine	NE-SW	4	58	17	754,849	210,829
McEwan Mine	E.15-A-NW-SW	4	58	17	186,164	24,824
Lincoln Mine	S½-SW	4	58	17	1,499,951	680,176
Lincoln Mine	SE-SE	5	58	17		
Sauntry Mine	SW-NE	5	58	17		
	N½-SE	5	58	17	6,628,395	1,211,008
	SW-SE	5	58	17		
Missabe Mtn. Mine (S.L.59)	NE-NE	8	58	17	3,367,299	859,167
Missabe Mtn. Mine	NW-NE	8	58	17	19,835,627	5,061,060
Missabe Mtn. Mine	SW-NE	8	58	17	17,863,310	5,870,777
Missabe Mtn. Mine	SE-NE	8	58	17	14,268,197	4,689,243
	E½-SE	8	58	17	8,688,651	1,587,416
Moose Reserve	W½-SE	8	58	17	5,703,193	1,103,272
Shaw Reserve	NW-NE	9	58	17	341,552	41,601
Auburn Land Reserve	SW-NE	9	58	17	21,100	8,336
Julia Mine	NW-SE	9	58	17	234,000	126,591
Julia Mine	NE-NW	9	58	17	552,400	127,607
Union Mine	NW-NW	9	58	17	555,731	154,308
Commodore Mine	SW-NW	9	58	17	2,325,250	794,193
Lone Jack Mine	W½-SW	9	58	17	3,928,731	1,370,349
Ohio Mine	S½-SE	9	58	17	16,275	30,109
Victoria Mine						
Total					88,998,079	$24,393,804

Name of Property	Description	Sec.	Tp.	R.	Tonnage	Assessed Value
Gilbert Village—						
Pettit Mine	NW-NW	25	58	17	1,311,381	$431,584
Schley Mine	SW-NW	25	58	17	5,086,411	699,036
Hobart Mine	SE-NW	25	58	17	1,614,494	251,997
Gilbert-Chicago No. 2 Res.	W½-SW	25	58	17	404,437	73,890
	E½-SE	26	58	17		
	SW-SE	26	58	17		
Gilbert Mine	NE-NE	26	58	17	1,221,457	401,432
Gilbert Mine	SE-NE	26	58	17	7,585,020	2,492,817
Gilbert Mine	W½-NE	26	58	17	452,209	148,618
Gilbert Mine	SE diag. ½ of SE NW	26	58	17	25,306	8,317
Gilbert Mine	NW-SE	26	58	17	2,005,492	366,404
Elba No. 1 Reserve	E½-SW	26	58	17	1,000,000	170,100
Elba No. 2 Reserve	W½-SW	26	58	17	1,498,700	254,928
Total					22,204,907	$5,299,123
Great Scott Township—						
Wade Mine	NW-SE	12	58	19	28,721	$2,805
Dean Mine	E½ of SE-NW	15	58	19	439,400	122,724
Woodbridge Mine (S.L. 370)	N½-NE	16	58	19	209,814	98,900
Thorne Mine No. 1	SE-NW	17	58	19	103,350	13,084
Iron Chief Reserve	U. S. Lot 4	18	58	19	642,265	109,249
	U. S. Lot 1	19	58	19		
	U. S. Lot 2	19	58	19		
Total					1,423,550	$346,762
Hibbing Village—						
Nassau Mine	U. S. Lot 2	5	57	20	1,276,983	$67,043
Nassau Mine	U. S. Lot 3	5	57	20	2,624,783	137,801
Longyear Mine	U. S. Lot 4	5	57	20	6,157,552	601,285
Iron Range No. 1 Reserve	SW-NW	5	57	20	723,997	70,699
Iron Range No. 2 Reserve	SE-NW	5	57	20	1,260,100	123,048
Webb Mine	U. S. Lot 1	6	57	20	300,598	160,073
Webb Mine	U. S. Lot 2	6	57	20	371,285	116,876
Webb Mine	SW-NE	6	57	20	8,578,075	1,044,810
Longyear Reserve	SE-NE	6	57	20	2,042,355	251,195
Sellers Mine	U. S. Lot 3	6	57	20	7,247,470	2,024,218
Sellers Mine	U. S. Lot 4	6	57	20	4,849,750	1,354,535
Sellers Townsite Mine	U. S. Lot 5	6	57	20	33,168,480	9,263,937
	SE-NW	6	57	20		
Pillsbury Add. Reserve	U. S. Lot 6	6	57	20	821,274	80,197
Susquehanna Mine	NE-SW	6	57	20	11,271,011	3,010,068
Susquehanna	NW-SE	6	57	20	6,591,236	1,458,878
Bourne Mine	SE-SW	6	57	20	2,890,795	352,099
	SW-SE	6	57	20		
Philbin Mine (S.L. 389)	E½-SE	6	57	20	2,134,048	336,743
Iron Range No. 3 Reserve	E½-NE	7	57	20	4,102,590	400,811
Bennett Reserve	NW-NE	7	57	20	1,533,411	149,737
Agnew No. 3 Reserve	NE-NW	7	57	20	2,096,230	255,322
	U. S. Lot 1	7	57	20		
Agnew No. 3 Reserve	U. S. Lot 2	7	57	20	2,999,335	365,319
	SE-NW	7	57	20		
Burt Mine	NE-NE	31	58	20	53,742	17,662
Day-Morris Mine	NW-NE	31	58	20	747,860	245,784
Winnifred Mine	SW-NE	31	58	20	153,520	35,465
	E½-NW	31	58	20		
Morris Mine (Burt)	SE-NE	31	58	20	2,775,435	912,147
Morris Mine (Day)	NE-SE	31	58	20	7,531,923	2,472,080
Morris Mine (Day)	SE-SE	31	58	20	7,648,941	2,513,825
Day Mine	E½-SW	31	58	20	5,835,690	1,917,900
Burt Pool Mine (Burt)	U. S. Lot 3	31	58	20	3,260,810	1,188,076
	U. S. Lot 4	31	58	20		
Oliver Reserve	NW-SE	31	58	20	776,671	94,599
Laura Mine	SW-SE	31	58	20	1,863,398	465,686
Burt Mine	SW-NW	32	58	20	1,369,130	316,269
Albany Mine	W½-SW	32	58	20	5,796,902	1,381,343
St. Anthony No. 2 Reserve	SW-SE	32	58	20	806,893	78,988
Mahoning Reserve	U. S. Lot 1	1	57	21	7,152,026	1,824,839
Mahoning Mine	U. S. Lot 2	1	57	21	10,149,726	4,071,055
Mahoning Mine	U. S. Lot 3	1	57	21	9,743,472	3,908,106
Mahoning Mine	U. S. Lot 4	1	57	21	9,752,839	3,911,863
Hull Rust Mine (Rust)	SW-NE	1	57	21	14,016,375	5,273,317
Hull Rust Mine (Rust)	SE-NE	1	57	21	16,491,758	5,420,016
Hull Rust Mine (Rust)	SW-NW	1	57	21	10,118,093	4,058,368
Hull Rust Mine (Rust)	SE-NW	1	57	21	16,819,480	6,746,293
Hull Rust Mine (Hull)	NW-SW	1	57	21	16,399,274	5,791,362
Penobscot Reserve	NE-SW	1	57	21	7,982,955	1,458,486

Name of Property	Description	Sec.	Tp.	R.	Tonnage	Assessed Value
Hibbing Village—Cont.						
Northern Pacific Reserve	SW-SW	1	57	21	3,502,571	$656,262
Northern Pacific Reserve	SE-SW	1	57	21	11,929,679	2,179,552
Northern Pacific Reserve	NE-SE	1	57	21	3,055,536	558,246
Northern Pacific Reserve	NW-SE	1	57	21	5,092,734	930,443
Northern Pacific Reserve	SW-SE	1	57	21	5,151,962	941,263
Rust Reserve	NE-NE	12	57	21	6,427,090	627,605
Scranton Mine (S.L. 392)	NW-NE	12	57	21	10,785,068	1,053,162
Scranton Mine	SW-NE	12	57	21	834,260	81,465
Scranton Mine	N½-NW	12	57	21	1,759,631	171,828
Alworth Land Reserve	NE-SE	12	57	21	637,698	62,271
Niagara No. 1 Res. (S.L. 438)	S½-SE	12	57	21		
Burt Pool Mine (Pool)(S.L.85)	SE¼	36	58	21	650,170	240,169
Total					310,225,609	$83,230,389
Kinney Village—						
Midway No. 1 Reserve	SE-SW	10	58	19	1,031,309	$100,716
	SW-SE	10	58	19		
Midway No. 2 Reserve	SW-SW	10	58	19	5,898,135	546,658
	NW-NW	15	58	19		
Seville Mine (S.L. 371)	N½-SE	10	58	19	209,119	20,420
	SE-SE	10	57	19		
Woodbridge No. 1 Reserve	N½-NE	11	58	19	541,739	52,901
(S.L. 525)	W½-NW	12	58	19		
	SE-NW	12	58	19	230,950	22,552
	N½-SW	12	58	19	120,019	11,720
Wade Mine	SE-SW	12	58	19	394,866	38,558
Wade Mine	NE-NW	13	58	19	1,292,391	126,202
Wade Mine	NW-NW	13	58	19	1,437,359	421,151
Wade Mine	NE-NE	14	58	19	148,143	34,221
Helmer Mine (S.L. 402)	SE-NE	14	58	19	590,197	57,632
Oliver Reserve	N½-NW	14	58	19	1,029,030	237,706
Kinney Mine	SE-NW	14	58	19		
	E½-SW-NW	14	58	19	4,250	982
Kinney-Scotch Mine	S½-NE	15	58	19	148,501	41,476
Dean Mine	NE-NW	15	58	19	689,597	67,339
Neville Reserve						
Total					13,465,695	$1,780,234
Leonidas Village—						
Gross Reserve	E½-SE	25	58	18	500,000	$60,900
Leonidas Mine (S.L.221-224)	NE-NE	36	58	18	4,064,150	1,133,345
Leonidas Mine	W½-NE	36	58	18	6,700,200	1,547,746
	SE-NE	36	58	18		
Leonidas Mine	SE¼	36	58	18	2,962,000	730,991
Total					14,226,350	$3,472,982
McKinley Village—						
McKinley Mine	SE-NW	8	58	16	1,292,212	$360,914
	NE-SW	8	58	16		
Winstar Mine	NE-NW	17	58	16	254,808	117,689
Total					1,547,020	$478,603
Mesaba Township—						
Iron Range No. 1 Res.	SW-SE	19	59	14	352,986	$34,469
Wentworth No. 1 Res.	SE-SW	21	59	14	671,494	65,571
Iron Range No. 2 Res.	NE-NW	30	59	14	550,211	53,728
Total					1,574,691	$153,768
Mesaba Village—						
Wentworth Reserve	SW-NE	21	59	14	483,986	$47,261
	NW-SE	21	59	14		
Total					483,986	$47,261
Missabe Mtn. Township—						
Minorca Mine	U. S. Lot 4	4	58	17	25,000	$6,983
	U. S. Lot 1	5	58	17		
	U. S. Lot 2	5	58	17		
Auburn Land Reserve	NE-NE	9	58	17	128,217	15,617
Elba-La Belle Mine	NE-SE	13	58	17	247,028	236,439
	S½-SE	13	58	17		
	N 500 ft, N½-NE	24	58	17		
Oliver Reserve	SW-SW	24	58	17	1,937,217	235,953
Oliver Reserve	SE-SW	24	58	17	261,786	31,883
Mariska Mine	W½-SE	24	58	17	253,557	27,398
Whiteside Land Reserve	U. S. Lot 2	30	58	17	22,741	2,770

Name of Property	Description	Sec.	Tp.	R.	Tonnage	Assessed Value
Missabe Mtn. Tp.—Cont.						
Genoa-Sparta Mine	SW-NW	34	58	17	451,807	$250,427
	SW¼	34	58	17		
	U. S. Lot 1	34	58	17		
	U. S. Lot 2	34	58	17		
Total					3,327,353	$817,662
Morse Township—						
Sibley Mine	SW-NW	26	63	12	3,013,687	$1,681,547
	NW-SW	26	63	12		
Total					3,013,687	$1,681,547
Mountain Iron Village—						
Merritt Reserve	U. S. Lot 4	1	58	18	173,182	$16,911
Hill Reserve	E½-SW	2	58	18	164,651	16,079
Hanna Mine (S.L. 364)	NW-SW	2	58	18	330,423	40,245
	SW-SW	2	58	18		
	N½-SE	3	58	18		
Snively Reserve	U. S. Lot 2	3	58	18	1,869,872	227,750
	SW-NE	3	58	18		
Mountain Iron Reserve	U. S. Lot 3	3	58	18	1,323,047	241,721
Mountain Iron Reserve	U. S. Lot 4	3	58	18	1,861,354	340,070
Mountain Iron-Res-Rathbun	NE-SW	3	58	18	45,722	9,988
Mountain Iron-Res-Townsite	SW-SW	3	58	18	141,924	30,996
Mountain Iron Mine	SW-NW	3	58	18	6,201,414	2,259,486
Mountain Iron Mine	SE-NE	4	58	18	4,103,597	1,495,145
Mountain Iron Mine-Rathbun	NW-SW	3	58	18	9,985,635	3,638,266
Mountain Iron Mine-Aetna	NE-SE	4	58	18	2,348,832	855,797
Wacoutah Mine (S.L.387-388)	SE-SW	3	58	18	411,408	114,907
	SW-SE	3	58	18		
Wacoutah Mine	SE-SE	3	58	18	3,443,538	961,780
Wacoutah Mine	NW-NW	11	58	18	137,600	38,432
Oliver Reserve (S.L.480)	SE-NE	9	58	18	298,591	36,369
Brunt Mine	NE-NE	10	58	18	724,509	38,038
Brunt Mine	NW-NE	10	58	18	854,659	44,870
Brunt Mine	SW-NE	10	58	18	1,722,857	90,450
Brunt Mine	NW-SE	10	58	18	213,326	11,199
Total					36,356,141	$10,508,495
Nichols Township—						
Pilot Mine (S. L. 353)	NW-SE	2	58	18	222,458	$62,133
Prindle Reserve (S.L.449-451)	E½	36	59	18	1,919,887	350,763
Total					2,142,345	$412,896
Stuntz Township—						
St. Anthony No. 2 Reserve	NE-NW	32	58	20	1,037,641	$128,058
Day Reserve	NE-SW	32	58	20	1,566,958	153,013
Burt Reserve	NE-NW	33	58	20	905,548	110,295
Burt Reserve	NW-NW	33	58	20	59,439	7,240
Burt Reserve	SE-NW	33	58	20	233,908	28,490
Neville Reserve	NW-NE	34	58	20	611,570	59,720
Great Northern Reserve	E½-SW	34	58	20	162,358	15,854
	W¼-SE	34	58	20		
Mahoning Mine	U. S. Lot 1	2	57	21	10,492,984	4,208,736
	U. S. Lot 2	2	57	21		
	U. S. Lot 3	2	57	21		
Mahoning Mine Res	U. S. Lot 4	2	57	21	4,425,306	1,129,882
Mahoning Mine Res	NW-SE (ex 18. 10 A.)	2	57	21	7,297,097	1,861,854
Mahoning Mine Res	N½-SW-SE (ex 9 A.)	2	57	21	2,153,794	549,541
Hull Mine	SW-NE	2	57	21	6,371,496	2,555,607
Hull Mine	SE-NE	2	57	21	7,391,064	2,964,555
Hull Mine	SE-NW	2	57	21	397,950	159,618
Hull Mine	NE-SE	2	57	21	11,841,695	4,749,703
Hull Mine Res	SE-SE	2	57	21	13,307,700	3,395,460
Smith Mine (S. L. 384)	SW-NW	2	57	21	689,580	192,599
	6.55 A.N.½-SW	2	57	21		
North Uno Mine (G. N.)	NE-SW	2	57	21	228,461	30,466
North Uno Mine (N. P.)	NW-SW	2	57	21	93,246	37,345
South Uno Mine (N. P.)	SW-SW	2	57	21	54,007	15,110
South Uno Mine (G. N.)	SE-SW	2	57	21	159,823	44,639
Utica Mine	S½-SW-SE	2	57	21	34,695	8,015
Utica Mine	NW-NE	11	57	21	828,688	297,012
Utica Mine	NE-NW	11	57	21	1,262,128	537,462

Name of Property	Description	Sec.	Tp.	R.	Tonnage	Assessed Value
Stuntz Township—Cont.						
Cyprus Mine	NW-SW	3	57	21	28,351	$7,918
	SE-SW	3	57	21		
Kerr Mine, (Fletcher-Sheridan)	U. S. Lot 1	3	57	21	835,038	233,229
Kerr Mine, (Fletcher-Sheridan)	SE-NE	3	57	21	928,000	113,030
Kerr Mine, (Chisholm)	U. S. Lot 2	3	57	21	5,700	1,592
Kerr Mine, (Sheridan-Day)	SE-SE	34	58	21	899,219	251,132
Kerr Mine,(Longyear-Bennett)	SW-SW	35	58	21	449,024	125,412
Kerr Mine, (Rust)	SE-SW	35	58	21	393,416	109,881
Sweeney Reserve	SW-SW	3	57	21	1,730,638	210,792
	SE-SE	4	57	21		
Dale Mine	SW-SE	3	57	21	112,406	31,391
Mahoning No. 4 Reserve	SE-SE	3	57	21	2,790,369	339,867
Mahoning No. 4 Reserve	NE-NE	10	57	21	4,743,600	577,771
Mace No. 1 Mine	NE-SW	7	57	21	70,547	34,430
	U. S. Lot 3	7	57	21		
	U. S. Lot 4	7	57	21		
	SE-SW	7	57	21		
Stevenson Mine	N½-SE	7	57	21		
	SE-SE	7	57	21		
	S½-NW	8	57	21	561,162	348,282
	N½-SW	8	57	21		
	SW-SW	8	57	21		
Lamberton Mine	NW-NE	9	57	21	826,241	60,729
	NE-NW	9	57	21		
Great Northern Reserve	NW-NW	9	57	21	206,718	20,186
Leetonia Mine	W½-NE	10	57	21	1,657,871	605,512
Wright-Davis No. 3 Res	SE-NE	10	57	21	2,827,615	276,116
Mahoning No. 5 Reserve	NE-NW	10	57	21	4,225,600	412,620
Mahoning No. 5 Reserve	NW-NW	10	57	21	1,276,000	124,601
Mahoning No. 5 Reserve	SE-NW	10	57	21	4,836,000	472,235
Mahoning No. 5 Reserve	NW-SW	10	57	21	372,000	36,326
Warren Mine	SW-NW	10	57	21	2,062,301	576,001
Great Northern Reserve	E½-SW	10	57	21	3,929,544	383,719
Great Northern Reserve	NE-SE	10	57	21	3,447,612	336,639
Carson Lake Res.(S.L. 443)	NW-SE	10	57	21	4,260,348	416,022
Great Northern Reserve	S½-SE (ex 23. 14 A.)	10	57	21	1,754,197	171,297
Agnew Mine	NE-NE	11	57	21	2,551,067	589,297
North Eddy Mine	SW-NE	11	57	21	526,459	142,237
	NW-SE	11	57	21		
South Eddy Mine	NE-SW	11	57	21	21,025	2,033
South Eddy Mine	SE-SW	11	57	21	2,512,967	245,391
South Agnew Reserve	SE-NE	11	57	21	8,263,253	1,006,464
Harold Mine	NW-NW	11	57	21	2,635,032	869,430
Wright-Davis No. 4 Res	SW-NW	11	57	21	2,900,897	283,273
Wright-Davis No. 5 Res	SE-NW	11	57	21	930,362	90,850
Wright-Davis No. 6 Res	NW-SW	11	57	21	255,677	24,967
Morton Mine (S.L. 468)	SW-SW	11	57	21	2,271,308	119,243
	NW-NW	14	57	21		
Agnew No. 2 Res	NE-SE	11	56	21	6,082,976	740,908
Gray Reserve (S. L. 430)	N½-NE	14	57	21	339,072	33,111
Gray Reserve	E½-NW	14	57	21	88,584	8,650
Great Northern Reserve	NE-NW	18	57	21	1,372,804	134,055
	U. S. Lot 1	18	57	21		
	U. S. Lot 2	18	57	21		
	SE-NW	18	57	21		
Great Northern Reserve	U. S. Lot 3	18	57	21	1,308,298	127,758
Great Northern Reserve	U. S. Lot 2	19	57	21	844,617	82,478
	SE-NW	19	57	21		
Mahoning Reserve	S½-SE	35	58	21	62,031	20,393
Total					149,806,192	$34,037,706
Unorg'zd T'nship 58½-17						
Silver Mine	U. S. Lot 2	5	58½	17	90,164	$25,185
Total					90,164	$25,185
Virginia City—						
Alpena Mine	U. S. Lot 3	5	58	17	2,667,238	$1,107,927
Alpena Mine	U. S. Lot 4	5	58	17	224,433	99,282
Enterprise Reserve	SW-NW	5	58	17	4,728,965	461,796
Bauntry Mine	SE-NW	5	58	17	10,134,445	1,949,784
Bauntry Mine	NE-SW	5	58	17	3,970,851	725,474
Bauntry Mine	S½-SW	5	58	17	4,467,812	816,269
Fay Mine (S.L. 346)	U. S. Lot 1	6	58	17	533,118	269,917
Oliver Reserve	SE-NE	6	58	17	525,666	64,036
Columbia Mine	NE-NW	8	58	17	4,115,617	548,817
Madrid Mine	SE-NW	8	58	17	60,812	35,245

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Name of Property	Description	Sec.	Tp.	R.	Tonnage	Assessed Value
Virginia City—Cont.						
Minnewas Mine(S.L.218-219)	W½	16	58	17	11,313,710	$2,797,238
Rouchleau Reserve	E½-NE	17	58	17	23,953,707	4,376,342
Great Western Reserve	SW-SW	17	58	17	5,108,305	933,287
Auburn Mine	SE-SW	17	58	17	1,793,917	327,749
	N½-NW	20	58	17		
Total					73,598,586	$14,512,391
White Township—						
Bennett Reserve	U. S. Lot 5	5	58	15	2,605,245	$84,014
Bennett Reserve	NE-SW	5	58	15	5,356,677	224,980
Bennett Reserve	U. S. Lot 6	5	58	15	7,431,532	301,696
Oliver Reserve	SW-NE	5	58	15	2,739,631	115,084
	NW-SE	5	58	15		
Syracuse Reserve	U. S. Lot 4	5	58	15	3,822,949	122,457
	U. S. Lot 1	6	58	15		
	U. S. Lot 12	6	58	15		
Ray Reserve	U. S. Lot 5	6	58	15	3,580,881	130,397
Orr Reserve	SE-NW	6	58	15	1,621,697	68,111
Bangor Mine	U. S. Lot 6	6	58	15	1,708,921	71,775
	U. S. Lot 10	6	58	15	640,798	3,364
Great Northern Reserve	U. S. Lot 11	6	58	15	472,645	19,850
N. W. I. Reserve	SW-SE	23	59	15	137,168	13,395
Stevens Reserve	SE-SW	23	59	15	19,870	2,420
Stevens Reserve	SE-SE	23	59	15	71,573	8,717
Stevens Reserve	NW-NW	25	59	15	447,957	54,561
Stevens Reserve	NE-NE	26	59	15	1,989,735	242,349
Stevens Reserve	NW-NW	26	59	15	1,239,060	150,918
Stevens Reserve	NW-SE	26	59	15	550,446	67,045
Stevens Reserve	SW-NW	25	59	15	133,425	16,251
Stevens Reserve	NW-SW	25	59	15	2,728,657	332,350
Stevens Reserve	NW-NE	26	59	15	4,020,064	489,643
Stevens Reserve	SE-NE	26	59	15	4,830,607	588,367
Stevens Reserve	NE-SE	26	59	15	6,803,975	828,724
Stevens Mine	SW-NE	26	59	15	7,843,441	1,432,997
Stevens Mine	SE-NW	26	59	15	4,788,515	874,862
Stevens Mine	NE-NW	26	59	15	6,439,838	1,176,559
Perkins Mine Reserve	SW-NW	26	59	15	365,981	44,577
Donora No. 1 Reserve	S½-NW	27	59	15	493,140	48,155
Donora No. 1 Reserve	S½-NE	28	59	15	2,205,563	215,373
Donora No. 2 Reserve	W½-SW	27	59	15	4,183,172	408,487
Donora No. 2 Reserve	NE-SE	28	59	15	1,435,219	140,149
Total					80,708,382	$8,307,607

ITASCA COUNTY

Bovey Village—						
Walker Mine	S. 400 ft. of NE-SW	29	56	24	117,116	$10,692
N. W. I. Reserve	S. 400 ft. of NE-SE	29	56	24	103,073	10,066
	SE-SE	29	56	24		
Total					220,189	$20,758
Calumet Village—						
Great Northern Reserve	NW-NE	21	56	23	148,545	$14,506
Great Northern Reserve	S½-NE	21	56	23	17,144	1,674
Total					165,689	$16,180
Coleraine Village—						
Clinton-Morrison Reserve	SE-SW	20	56	24	1,478,141	$144,340
Danube Mine	S½-SE	20	56	24	2,875,984	407,743
Oliver Reserve	E½-NW	21	56	24	404,532	39,511
Judd Mine	NW-NW	21	56	24	17,948	3,279
Judd Mine	SW-NW	21	56	24	419,648	76,670
Oliver Reserve	NE-SW	21	56	24	533,386	52,085
Bovey No. 1 Reserve	NW-SW	21	56	24	406,654	39,710
Walker Hill No. 2 Reserve	S½-SW	21	56	24	6,268,198	612,088
	N½-NW	28	56	24		
	NE-NE	29	56	24		
N. W. I. Reserve	SW-NW	28	56	24	117,197	11,444
	SE-NE	29	56	24		
Great Northern Reserve	N½-SW	28	56	24	1,030,196	100,598
	SW-SW	28	56	24		
Lewis Reserve	NW-NE	29	56	24	3,864,681	377,386
Fletcher No. 3 Reserve	SW-NE	29	56	24	670,512	65,476
Morrison Reserve	N½-NW	29	56	24	1,939,940	189,405

Name of Property	Description	Sec	Tp.	R.	Tonnage	Assessed Value
Coleraine Village—Cont.						
Walker Mine	S½-NW	29	56	24		
	N. 920 ft. NE-SW	29	56	24	5,275,214	$963,782
	NW-SW	29	56	24		
N. W. I. Reserve	N. 920 ft. NE-SE	29	56	24	218,902	21,376
Canisteo Mine	SW-SW	29	56	24		
	NE-NE	31	56	24	722,900	132,074
	NW-NW	32	56	24		
Canisteo Mine	S½-NE	30	56	24		
	N½-SE	30	56	24	1,866,660	341,039
Canisteo Mine	E½-SW	30	56	24	1,811,274	220,613
Canisteo Mine	S½-SE	30	56	24	2,841,543	519,149
Walker Hill No. 3 Reserve	NW-NE	31	56	24		
	NE-NW	31	56	24		
	U. S. Lot 2	31	56	24	987,970	96,476
	SE-NW	31	56	24		
Total					33,751,280	$4,414,244
Greenway Township—						
South Harrison Mine	U. S. Lot 1	1	56	23		
	U. S. Lot 2	1	56	23	82,336	$8,040
Kevin Mine (S. L. 376)	SE-NW	1	56	23		
	N½-SW	1	56	23	994,135	181,632
	SW-SW	1	56	23		
Patrick Mine	U. S. Lot 1	2	56	23		
	S½-NE	2	56	23	1,164,733	212,797
	N½-SE	2	56	23		
Majorca Mine (S. L. 456)	S½-SW	9	56	23		
	S½-SE	9	56	23	255,387	46,650
Draper Mine (S. L. 478)	SW-NW	10	56	23		
	NW-SW	10	56	23	141,335	25,822
Draper Mine	SW-SW	10	56	23	15,950	2,914
Akeley No. 2 Reserve	SE-SW	10	56	23	688,200	67,202
Total					3,342,096	$545,056
Keewatin Village—						
Russell Mine	SE-SW	13	57	22		
	SW-SE	13	57	22	662,790	$64,726
Mississippi Mine	NE-NE	23	57	22	718,052	322,302
Edmund No. 2 Res. (S. L. 355)	NW-NE	23	57	22	506,551	49,464
Edmund No. 2 Reserve	SW-NE	23	57	22	624,068	60,940
South Mississippi Reserve	SE-NE	23	57	22	1,226,195	119,738
Sargent Mine	NE-SE	23	57	22	146,659	14,321
Sargent Mine	NW-SE	23	57	22	384,852	37,581
Sargent Mine	SW-SE	23	57	22	2,311,738	467,966
Sargent Mine	SE-SE	23	57	22	621,660	139,196
Bennett Mine	NE-NE	24	57	22	5,447,000	531,899
Bennett Mine	NW-NE	24	57	22	5,607,972	1,024,576
Bennett Mine	S½-NE	24	57	22	2,994,000	292,364
Bennett Mine	N½-NW	24	57	22	4,701,896	1,209,135
Jones No. 2 Reserve (S. L. 356)	S½-NW	24	57	22	1,670,449	163,120
St. Paul Mine	N½-SW	24	57	22	5,617,029	295,033
Prindle No. 2 Reserve	SW-SW	24	57	22	2,652,986	259,084
Great Northern Reserve (S. L. 470)	E½-SE	24	57	22	275,144	26,867
Total					36,168,841	$5,078,292
Lone Pine Township—						
Harrison Mine	U. S. Lot 3	6	56	22		
	U. S. Lot 4	6	56	22	1,080,000	$197,316
Total					1,080,000	$197,316
Marble Village—						
Hill Annex (S. L. 378)	N½-NE	16	56	23	128,097	$12,509
Hill Annex (S. L. 378)	S½-NE	16	56	23	955,907	174,644
Hill Annex (S. L. 377)	NE-NW	16	56	23	973,236	177,810
Hill Annex (S. L. 377)	NW-NW	16	56	23	709,173	129,565
Hill Annex (S. L. 377)	SW-NW	16	56	23	4,207,252	410,838
Hill Annex (S. L. 377)	SE-NW	16	56	23	6,388,902	668,848
Hill Annex (S. L. 375)	SW¼	16	56	23	8,400,047	820,264
Hill Annex (S. L. 374)	SE¼	16	56	23	139,108	13,584
Hill Mine	NE¼	17	56	23		
	SE-NW	17	56	23	4,525,694	826,843

Name of Property	Description	Sec.	Tp.	R.	Tonnage	Assessed Value
Marble Village—Cont.						
Walker-Hill No. 6 Reserve	SW-NW	17	56	23		
	S½-NE	18	56	23	148,945	$14,545
	SE-NW	18	56	23		
Trumbull Mine	NE-SW	17	56	23		
Trumbull Mine	NW-SW	17	56	23	4,552,000	444,503
	NE-SE	18	56	23		
Oliver Reserve	S½-SW	17	56	23	723,009	70,602
Hill-Delaware Reserve	N½-SE	17	56	23	3,942,588	384,994
Gross Reserve	SE-SE	18	56	23		
	NE-NE	19	56	23	1,423,629	139,017
	N½-NW	20	56	23		
Walker Hill No. 5 Reserve	NE-SW	18	56	23		
	SW-SE	18	56	23	378,022	36,914
	W½-NE	19	56	23		
Walker Hill No. 4 Reserve	U. S. Lot 4	18	56	23		
	SE-SW	18	56	23		
	NE-NW	19	56	23	2,452,246	239,460
	U. S. Lot 1	19	56	23		
Total					40,047,855	$4,584,938
Nashwauk Township—						
Russell Mine	SE-NE	13	57	22		
	SW-NW	13	57	22		
	SW-SW	13	57	22	2,683,735	$262,066
	N½-SE	13	57	22		
	SE-SE	13	57	22		
Congdon Res. (S.L. 406)	SE-SW	22	57	22	311,033	3,266
Great Northern Reserve	SE-SE	22	57	22	58,136	5,677
Missabe Chief Res. (S.L.268)	NE-SW	23	57	22	578,111	56,452
Missabe Chief Res.	NW-SW	23	57	22	1,365,539	133,345
Missabe Chief Res.	SW-SW	23	57	22	1,145,128	111,822
Bray Mine	SE-SW	23	57	22	1,558,068	255,679
Sargent Mine	W½-NE	26	57	22	477,295	46,607
Gordon Mine	NE-NW	26	57	22	1,727,202	168,661
Gordon Mine	NW-NW	26	57	22		
Gordon Mine	SW-NW	26	57	22	261,334	25,519
N. W. I. Reserve	NW-NE	27	57	22		
	NE-NW	27	57	22	216,000	21,092
Bennett No. 5 Reserve	NE¼	28	57	22	163,297	15,946
Great Northern Reserve	NE-NW	28	57	22		
	S½-NW	28	57	22	549,170	53,627
Great Northern Reserve	N½-SW	28	57	22	240,000	23,436
Ann Mine	S½-SW	36	57	23	342,017	33,397
Total					11,676,065	$1,216,592
Nashwauk Village—						
Great Northern Reserve	NW-SW	29	57	22	52,314	$5,108
Mace No. 2 Mine	NE-SW	29	57	22		
	S½-SW	29	57	22	584,778	106,839
Pearson Mine	N½-SE	29	57	22	123,000	24,047
La Rue Mine	SW-SE	29	57	22	465,225	49,776
La Rue Mine	SE-SE	29	57	22	1,554,641	88,079
La Rue Mine	NW-NE	32	57	22	1,702,370	26,444
La Rue Mine	NE-NW	32	57	22	384,291	4,035
Crosby Mine	NE-NE	31	57	22		
	NW-NW	32	57	22	605,085	195,752
York Mine	W½-NE	31	57	22	525,268	95,967
Great Northern Reserve	NE-NW	31	57	22		
	U. S. Lot 1	31	57	22	43,155	4,214
	U. S. Lot 2	31	57	22		
Great Northern Reserve	SE-NW	31	57	22	36,873	3,600
Quinn Mine	U. S. Lot 3	31	57	22	150,000	27,405
	U. S. Lot 4	31	57	22		
Hawkins Mine	SE-NE	31	57	22	128,666	135,694
Hawkins Mine	NE-SE	31	57	22	1,349,991	312,887
Hawkins Mine	SW-NW	32	57	22	595,297	125,677
Hawkins Mine	NW-SW	32	57	22	334,532	61,119
North Harrison Mine	E½-SW	31	57	22	900,000	164,430
Total					9,535,486	$1,431,073

Name of Property	Description	Sec.	Tp.	R.	Tonnage	Assessed Value
Taconite Village—						
Arcturus Mine	SE-SW	13	56	24	6,832,108	$1,248,226
	S½-SE	13	56	24		
	N½-NE	24	56	24		
	NE-NW	24	56	24		
Diamond Mine	SE-SW	15	56	24	2,500,000	244,125
	SW-SE	15	56	24		
	NW-NE	22	56	24		
	N½-NW	22	56	24		
North Star Mine	NE-NE	21	56	24	470,042	57,251
North Star Mine	NW-NE	21	56	24	84,161	10,251
Holman Mine	SW-NE	21	56	24	1,825,662	333,548
Holman Mine	SE-NE	21	56	24	2,214,802	404,645
Holman Mine	S½-NW	22	56	24	373,263	68,195
	NE-SW	22	56	24		
	NW-SE	22	56	24		
Bingham Mine	NW-SE	21	56	24	1,010,000	98,627
Total					15,310,038	$2,464,868

LAKE COUNTY

Fall Lake Township—						
Section 30 Mine	U. S. Lot 6	30	63	11	82,170	$7,370
Total					82,170	$7,370

CROW WING COUNTY

Crosby Village—						
Croft Mine	SE dlng. ¼ of SW				225,934	$68,930
	SW	1	46	29	1,087,399	242,145
Croft Mine	SE-SW	1	46	29	1,882,540	168,418
Thompson Mine (S.L.775)	SW-SE	2	46	29		
Armour No. 2 Mine	SW-NW	11	46	29	4,047,232	426,193
Armour No. 2 Mine	SE-NW	11	46	29		
Meacham Mine	NE-NE	11	46	29	857,428	248,286
Meacham Mine	NW-NW	12	46	29		
Total					8,100,533	$1,153,972
Cuyuna Village—						
Kennedy Mine	U. S. Lot 6	29	47	28	661,773	$242,629
Kennedy Mine	U. S. Lot 5	30	47	28		
Kennedy Mine	NW-SE	30	47	28		
Total					661,773	$242,629
Ironton Village—						
Hill Crest No. 1 Mine	NE-SE	9	46	29	1,611,265	$96,676
Hill Crest No. 2 Mine	W½-SW-NW	10	46	29	953,778	57,227
	W½-NW-SW	10	46	29		
Mangan No. 2 Mine	NE-NE	10	46	29	371,491	11,145
Pennington Mine	SW-NE	10	46	29	2,097,974	251,757
Armour No. 1 Mine	SE-NE	10	46	29	2,744,995	248,040
Mahnomen Mine	NW-NE	10	46	29	1,922,494	230,699
	NE-NW	10	46	29		
Feigh Mine	E½-SW-NW	10	46	29	4,548,374	273,622
	SE-NW	10	46	29		
	NE-SW	10	46	29		
	E½-NW-SW	10	46	29		
Bonnie Belle Mine	N½-NE-SE	10	46	29	132,411	24,561
Ironton Mine	NW-SW	11	46	29	658,730	70,049
Total					15,041,521	$1,272,776
Irondale Township—						
Mahnomen Mine	3.3 A. SW-SE	3	46	29	421,709	$50,605
	SE-SE	3	46	29		
Rowe Mine	U. S. Lot 8	18	46	29	432,156	37,034
	U. S. Lot 9	18	46	29		
Total					853,865	$87,639

Tonnages of underground mines include ore in stock piles.
Properties owned in fee by the State and leased are indicated by the abbreviation "S. L." with number of lease in force.

In addition to the detailed list of merchantable tonnages and values as shown in the foregoing table, the tax commission has placed assessments under Class 1 amounting to $1,323,925 on various tonnages of ore not now merchantable, as well as certain assessments on so-called "mineral prospects," located in the several mineral counties of the state. The following are the figures in detail:

Detailed summary of assessments placed on tonnages of ore not now merchantable, as well as other miscellaneous assessments under Class 1 (unmined iron ore).

County of St. Louis	
Aurora	$ 14,800
Balkan	98,290
Biwabik	21,925
Buhl	42
Chisholm	17,709
Fayal	5,722
Franklin	892
Hibbing	6,790
Kinney	7,293
McKinley	17,808
Mesaba Town	1,680
Mesaba Village	2,919
Mesaba Mountain	3,150
Mountain Iron	17,651
Stuntz	48,148
Virginia	38,745
White	59,241
Total	$362,805
County of Itasca	
Arbo	$ 20,827
Grand Rapids	36,106
Greenway	29,610
Keewatin	19,639
Nashwauk	3,465
Total	$109,647
County of Crow Wing	
Brainerd	$ 5,392
Crosby	79,820
Crow Wing	24,305
Cuyuna	8,305
Deerwood	25,542
Irondale	267,280
Ironton	119,350
Long Lake	5,426
Manganese	6,708
Nokay Lake	39,535
Oak Lawn	59,411
Rabbit Lake	3,543
Riverton	98,000
Trommald	47,570
Wolford	61,286
Total	$851,473
County of St. Louis	$362,805
County of Itasca	109,647
County of Crow Wing	851,473
Total	$1,323,925

STATE MINERAL LEASE DATA

TONNAGES AND ASSESSED VALUES OF MERCHANTABLE IRON ORE AS OF MAY 1, 1920

LEASES ON STATE SCHOOL LANDS

No.	Property Name	Description	Sec.	Tp.	R.	Tonnage	Assessed Value
59	Missabe Mt.	NE¼	8	58	17	55,334,433	$16,480,247
65	Duncan	SW¼ SW¼ Sec. 26; SE¼ SE¼	27	58	20	530,664	33,432
85	Pool	SE¼	36	58	21	659,170	240,160
174	Grant	NE¼ NW¼, S½ NW¼, NW¼ SW¼	20	58	19	5,480,481	530,093
218-0	Minnewas	W½	16	58	17	11,219,420	891,888
221	Leonidas	NE¼	36	58	18	10,758,006	2,681,091
224	Leonidas	SE¼	36	58	18	2,923,178	675,254
353	Pilot	N½ NE¼, SW¼ NE¼, NW¼ SE¼	2	58	18	222,458	62,133
365	Frants	NW¼ NW¼	21	58	19	630,918	88,000
362	Shiras	SW¼	16	58	19	410,692	60,350
363	Wanless	SE¼	16	58	19	899,534	251,239
364	Hanna	W½ SW¼ Sec. 2; N½ SE¼	3	58	18	330,423	40,245
370	Woodbridge	NE¼	16	58	19	270,860	36,118
371	Seville	SW¼ NE¼, N½ SE¼, SE¼ SE¼	10	58	19	209,119	20,420
374	Hill Annex	SE¼	16	56	23	139,108	13,884
375	Hill Annex	SW¼	16	56	23	8,400,047	820,264
377	Hill Annex	NW¼	16	56	23	12,278,563	1,407,039
378	Hill Annex	NE¼	16	56	23	1,084,004	187,153
387	Wacoutah A	SE¼ SW¼, S½ SE¼	3	58	18	3,854,946	1,076,687
388	Wacoutah B	NW¼ NW¼	11	58	18	137,600	38,432
391	Eaton	S½ SE¼	9	58	19	46,330	
402	Helmer	NE¼ NE¼	14	58	19	148,143	34,221
449	Prindle	SE¼	36	59	18	1,919,887	350,763
451	Prindle	NE¼	36	59	18		
468	Morton	SW¼ SW¼ Sec. 11; NW¼ NW¼	14	57	21	2,271,208	119,243
480	Oliver Res.	SE¼ NE¼	9	58	18	298,591	36,389
525	Oliver Res.	N½ NE¼ Sec. 11; W½ NW¼	12	58	19	541,730	52,901
623	Orelands Co. Res.	W½-NW¼	20	47	28	118,121	3,543
776	Martin	Lot 2	16	46	29	1,189,348	35,681
	Total ore in school lands					122,336,091	$25,976,491

LEASES ON STATE SWAMP LANDS

No.	Name of Property	Description	Sec.	Tp.	R.	Tonnage	Assessed Value
346	Fay	NE¼ NE¼	6	58	17	442,454	$102,207
384	Smith	SW¼ NW¼	2	57	21	689,580	192,520
389	Philbin	E½ SE¼	6	57	20	2,058,074	274,444
392	Scranton	N½ NE¼, SW¼ NE¼	12	57	21	18,046,418	1,762,232
430	Gray	N½ NE¼, E½ NW¼	14	57	21	427,656	41,781
438	Niagara	NE¼ SE¼, S½ SE¼	12	57	21	637,698	62,271
443	Carson Lake	NW¼ SE¼	10	57	21	4,260,348	416,023
775	Thompson	SW¼ SE¼	2	46	29	1,882,540	168,418
		Total ore in swamp lands				28,444,768	$3,019,955

LEASES ON STATE UNIVERSITY LANDS

No.	Name of Property	Description	Sec.	Tp.	R.	Tonnage	Assessed Value
268	Mesabi Chief	N½ SW¼, SW¼ SW¼	23	57	22	3,088,778	$301,619
335	Arthur Reserve	W½ NE¼	23	57	22	1,130,619	110,384
356	Arthur Reserve	S½ NW¼	24	57	22	1,670,449	163,120
378	Kevin	SE¼ NW¼, N½ SW¼, SW¼ SW¼	1	56	23	994,155	181,632
456	Majorca	S½ S½	9	56	23	255,387	46,659
460	Longyear Res	SE¼ SW¼	22	57	22	311,033	3,266
470	Arthur Reserve	E½ SE¼	24	57	22	275,144	26,867
478	Draper	SW¼ NW¼, NW¼ SW¼	10	56	23	141,335	25,822
		Total ore in university lands				7,866,900	$859,369

SUMMARY

	Tonnage	Assessment 1920
School land leases	122,336,091	$25,076,491
Swamp land leases	28,444,768	3,019,955
University land leases	7,866,300	859,369
Grand total	158,647,759	$29,855,815

December 20, 1920.

Minnesota Tax Commission, State Capitol, St. Paul, Minn.

Gentlemen: In compliance with your request we beg leave to submit the following report:

Beginning its work in June, 1909, the School of Mines, in the capacity of Consulting Mining Engineer, has, up to September 1, 1920, examined and submitted reports on various properties on the Mesabi, Vermilion and Cuyuna Ranges involving a total tonnage of 2,533,797,754 tons of merchantable iron and manganiferous iron ores. In addition it has furnished information and reports on a number of non-mineral properties, estimated a large tonnage of non-merchantable ore material, and furnished information of a technical character on a number of properties.

Properties Reported 1918-1920

During the period from September 1, 1918 to September 1, 1920, we have reported on a total of 137 properties. These reports involved a total tonnage of Bessemer, non-Bessemer and manganiferous iron ores of 342,909,846 tons. The reports on 75 properties showed an increase of 50,440,835 tons while 43 properties showed a decrease of 28,228,169 tons which, when taken with 18,472,557 tons of ore in properties that were examined by us for the first time, show a net increase for the biennium of 40,685,223 tons.

In addition to the above tonnage we have reported 80,107,449 tons of non-merchantable ore material, consisting of paint rock, lean ore and highly silicious ore, occurring in 65 of the above mentioned properties. As time goes on and the present reserves of high grade ores become exhausted, if current furnace practice changes, and if new processes of beneficiation are developed, or the cost of mining and beneficiation of lean ore is reduced to show a margin of profit, much of this tonnage may be made merchantable and will then be added to the merchantable tonnage.

Of the above mentioned 137 properties, 7 were of the non-mineral type, i. e., they were explored and mapped but showed no merchantable ore.

Technical information not involving the question of tonnage was furnished the commission whenever requests were made.

Twelve trips were taken to the mining districts of Minnesota, requiring 55 days of field work for two men and necessitating the traveling of 5,600 miles. Two men spent full time for 200 days and one man part time for 200 additional days on office work.

Field and Office Work

The methods of checking and estimating tonnages are described in detail in our report of December 1, 1914. Each property, necessarily, is considered on its own merits and in every case the standard practice of the district in which the property is located is followed in making the estimate.

During the fall and winter of 1918-19 a new filing system for reports was installed in the office with a complete card index. The filing of correspondence was also changed, indexed, and cross indexed, making the information and data in this office much more readily available.

A large amount of field work is essential. With most operating mines it is advisable to make first a personal examination of mining conditions before estimating and reporting.

Staff

Mr. E. M. Lambert, Associate Professor of Mining Engineering, remains in charge of the ore estimating work and is ably assisted by Mr. A. J. Carlson, Assistant Professor of Mine Plant and Mechanics.

Acknowledgement

We wish to acknowledge the hearty co-operation of the officials of the various mining companies in furnishing us promptly, all necessary data and lending us every possible assistance in examining their properties and checking their estimates.

Yours very truly,

MINNESOTA SCHOOL OF MINES,

W. R. Appleby, Dean.

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In reply to an inquiry by the Court counsel for the defendants conceded that the court had equity jurisdiction.

76 It is stipulated and agreed that the foregoing statement of evidence is a full, complete and correct statement thereof.

WILLIAM D. BAILEY,
OSCAR MITCHELL,
ALBERT C. GILLETTE,
Solicitors for Bennett Mining Company et al., Plaintiffs; Republic Iron & Steel Company et al., Plaintiffs.

A. L. AGATIN,
HOWARD T. ABBOTT,
E. W. MacPHENAN,
Solicitors for Interstate Iron Company et al., Plaintiffs; the Biwabic Mining Company et al., Plaintiffs.

C. A. SEVERANCE,
GEORGE W. MORGAN,
Solicitors for Oliver Iron Mining Company, Plaintiff.

H. J. GRANNIS,
Solicitor for the Cleveland-Cliffs Iron Company, Plaintiff; the Mesaba-Cliffs Iron Mining Company, Plaintiff.

CLIFFORD L. HILTON,
EGBERT L. OAKLEY,
PATRICK J. RYAN,
Solicitors for Defendants.

The foregoing statement of evidence is found to be true, complete and properly prepared and is hereby approved.

TILMAN D. JOHNSON,
Judge of the United States District Court.

Endorsed: Filed August 2, 1922. Joel M. Dickey, Clerk, by E. Catherine Neff, Deputy Clerk.

(Here follows reproduction of Exhibit B, Report of Minnesota Tax Commission on Tonnage Tax and Net Profit Tax on Iron Ore, marked pages 77-149, inclusive.)

150 PLAINTIFF'S EXHIBIT "C."

Inaugural Message of Governor J. A. O. Preus to the Legislature of Minnesota, January 5, 1921.

151 Gentlemen of the Senate and House of Representatives:

The Constitution of the State of Minnesota provides that:

"The governor shall communicate by message to each session of the legislature such information touching the state and condition of the country as he may deem expedient."

The people of Minnesota have just emerged from a notable political contest, a contest not for party honors but one determining the ideals and proclaiming the aspirations of a majority of our people. In the interest of all the people of the state, I deem it most expedient to call your attention primarily to those issues settled on November second, to the exclusion of other subjects concerning which there is little or no controversy, in the hope that the will of the majority, as reflected at the polls, may have your particular attention.

Election Reform.

That the laws relating to primary elections are defective is universally conceded. Any law which permits a party candidate who is defeated at the primary election of his party to become a candidate of another party for the same office at the ensuing general election is not only absurd and politically dishonest, but it makes a mockery of the oaths of party allegiance voluntarily taken by all candidates who file at the primary.

The Republican platforms of March 20th and May 8th, 1920, each specifically declares in favor of legislation providing for the nomination of party candidates by the convention system and prohibiting the misuse of the party name. Legislation covering these points should be promptly passed. The convention system can be easily safeguarded at its source by requiring delegates to be elected by the primary method, and by having the returns of the election of the delegates officially canvassed and declared, contests can be eliminated and honest conventions fully representing the people assured.

152 Under our law the members of the legislature are elected without party designation. This is a paradox. Political parties are a necessity in representative government, and will exist whether recognized by law or not.

To illustrate, an organization exists in Minnesota the foundation of which is political. Not only has it avoided recognition as a political party, thus evading the legal obligation of every political organization to give due publicity to its expenditures, but it has deliberately disregarded and ignored the will of the majority of a great political party as expressed at the primary election. At the last

primary election, it undertoook to nominate its candidates on the Republican ticket and failing to do so caused its candidates' names to be printed upon the election ballot as nominated by petition.

I call attention to this fact to show that whether the law provides for the recognition of political parties or not, they will exist just the same. Political parties exist so far as the legislature of the State of Minnesota is concerned notwithstanding the fact that the members thereof are elected without party designation. But whether members of the legislature should be elected upon party tickets and party platforms is peculiarly a question for the legislature itself to determine, and I refer the question to the legislature believing that in its wisdom, it will find the correct answer.

Co-Operative Marketing.

The overshadowing issue in the recent political contest was the economic problem relating to the marketing of farm products. The disparity between the sums paid the farmer for his raw products and the prices paid by the consumer for the finished article is too great. In order that the farmer may receive greater reward for his toil, it is urged that the state buy from him his raw products, manufacture them into finished products and distribute the finished article to the consumers.

The Republican party, to which I owe allegiance, placed in its platform the following plank:

"We believe that the practical solution of all farm production and marketing problems is along the line of continued development of co-operation, and we are unalterably opposed to the socialist scheme of discarding co-operation and substituting the dangerous plan of state ownership."

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Which of these plans should be followed in order to aid the farmer and the consumer was the principal issue in the recent campaign. By a very substantial majority, the co-operative plan was endorsed.

Agricultural development is marked by three periods: Production, Distribution, Manufacture. Minnesota farmers have entered upon the second stage. They desire not only to remain producers, but to become themselves a part of the marketing machinery.

The American Farm Bureau Federation embraces a membership of approximately one and a half million farmers, while the Minnesota Farm Bureau Federation has at present an approximate farmer membership of forty-five thousand. Before these two organizations there are three proposals intended to enable the farmers to definitely enter the second period and become distributors of their own products:

First. That the farmers, through a system of collective sale of their produce, establish their own distributing exchanges and thereby bring their produce directly to the manufacturer.

Second. That the farmers organize stock corporations, stock to be held by the farmers themselves, or by their own local co-operative units, the distribution of profits to be made upon the basis of stock held by an individual or a local co-operative unit; the co-operative unit however to distribute its profits upon a patronage basis, if desired, such a stock company to have a seat in the exchanges of the terminal markets.

Third. That the farmers organize purely co-operative or mutual selling agencies to have memberships in the terminal exchanges, such agencies to make their distribution of profits according to the patronage of the farmer member of such a co-operative selling agency.

The first two plans need no legislation. I believe that the second plan is a practical one and that you will redeem the pledges made in the recent campaign if you will instruct the State Department of Agriculture to assist the farmers in organizing local and terminal co-operative selling agencies, and in addition thereto equip the Department with means and experts to make such assistance efficient and effective. A specific illustration of the achievement of
154 the Department of Agriculture in such organization work is the Minnesota Potato Exchange. With the co-operation of other agricultural interests, it was organized by the State Department of Agriculture. Its membership includes over one hundred local co-operative potato associations, all marketing their produce through the state exchange.

In similar manner, the Department of Agriculture in conjunction with the farmers' co-operative organizations might develop a grain selling agency. Minnesota has approximately four hundred co-operative elevators. If a group of these elevators should be organized, each elevator purchasing stock in a selling agency, such agency to have membership in the terminal grain markets at Minneapolis and Duluth, the farmers of Minnesota will have constituted themselves distributors. They will be distributors in the same manner as the grain growers of Canada who have organized the greatest grain selling agency in the world, namely: The United Grain Growers of Canada. Stock can be sold to the farmers in small amounts, or if the farmers should prefer, they can instruct their local co-operative elevators to purchase stock in the central selling agency. The central selling agency can make its distribution to its stockholders on a stock basis but the local co-operative elevators might make their distributions not upon the amount of stock held by their members, but upon the patronage of the farmer members of the local elevator association. Such a plan could be carried out, not only in marketing of grain, but as well in the marketing of live stock and other produce. I sincerely hope that you will provide for the organization of such companies holding memberships in the terminal exchanges and that the action taken will be sufficiently prompt to permit marketing of next year's crop in this manner by those individual farmers or farmer organizations who so desire.

If neither of the two first plans referred to is satisfactory, the third might be adopted. This would be accomplished if your body would pass a law compelling all terminal exchanges to admit to membership purely mutual concerns which would make their distributions on the so-called patronage basis, without taking into consideration the stock held by a patron.

At the present time, the various exchanges operating in Minnesota have a rule that there shall not be any rebating by members of exchanges to those who sell their produce through such
155 members. If a farmers' co-operative concern were admitted on the basis just referred to, this rule would have to be modified. It is for you to determine whether such a rule is in the interest of all the people of the State of Minnesota, producer and consumer alike, or should by legislative act be abrogated or modified.

While in this message I have stressed the party pledge to establish marketing facilities for farmers, I urge you to give careful consideration to the legislative programs of the American Farm Bureau Federation and the Minnesota Farm Bureau Federation and especially to their recommendations relative to rural credits and future trading.

The problem of trading in futures is national in character. Prices of Minnesota farm products are frequently affected by sales or purchases by men of large resources dealing particularly in the Chicago Grain Exchange. For this reason you will doubtless acquaint the National Congress, which is now considering the question, with your views on this subject. Legislation by your body would avail little if any.

Minnesota is an agricultural state. Its strength is in its farming population. Its ultimate welfare demands and must depend upon prosperous farms and happy farm homes. There is no class question involved and can be none. The interests of the public as a whole are inextricably interwoven with those of the men and women who farm. I deem a satisfactory solution of the farmer's problems the most vital question before you and hope to address you further upon the subject during this session.

Tonnage Tax.

Less than a generation ago only a few thousand tons of iron ore were each year produced in Minnesota; now there are produced more than thirty million tons annually. Today mining is the second industry of the state.

While some states have had difficulty in the taxation of mineral properties, Minnesota has achieved marked success in the assessment of its iron ore resources. Taxing authorities agree that when ore bodies are definitely located and explored, under the system now in use, their values can be appraised for purposes of taxation with as much accuracy as farm and city realty.

156 While the matter of the taxation of iron ore on a tonnage basis should not be a party or political question, nevertheless

the Republican party, the Democratic party, and the Nonpartisan League are committed thereto. The platform upon which I was elected declares for a fair and equitable tonnage tax.

The present administration pledges its co-operation in the enactment of such law and as Governor I will give my approval thereto.

The legislature of 1881 enacted a tonnage tax of one cent per gross ton on iron ore mined in the state. This tax was levied in lieu of all other taxes on such ore. That law was repealed in 1897, the attorney general of the state having rendered an opinion that the law was unconstitutional. Since 1897 iron mines have been assessed and taxed on an ad valorem basis, but meanwhile a number of tonnage tax measures have been introduced in various sessions of our legislature. The three bills appearing to have had the greatest consideration were measures endeavoring to levy:

First, a tax based on metallic content without regard to the cost of mining.

Second, a tax on gross production.

Third, a tax upon profits after making certain deductions.

All of these measures were based upon tonnage and all except the first mentioned were super-tax measures.

The first of these bills was House File No. 227, introduced in the session of 1909. Under this measure, mines which yielded less than 49 per cent iron ore content would pay a tax of two cents per ton; between 49 per cent and 54 per cent, three cents per ton; between 54 and 59 per cent, four cents per ton; and from 59 per cent up, five cents per ton.

This bill did not propose a fair method of taxing iron ore. The highest grade ores in Minnesota are found in mines on the Vermillion range. These are underground mines where, after shafts have at great expense been sunk to various depths, in some instances as deep as 1,200 feet, the ore is found. Lower grade ores are found on the Mesabi range where the ore may be removed after stripping operations at less cost of mining than on the Vermillion range. This measure favored the open pit mines and treated unfairly underground mines having iron ore high in metallic content,
157 but where higher mining costs prevail. This bill was vetoed by Governor Johnson.

In the session of 1917, House File 253 was introduced. This bill proposed a tax of two per cent on the gross value at the mouth of the mine on all ores mined in the state. This measure is open to the same criticism as the previous one, for the reason that in ascertaining the gross value of a ton of iron ore at the mouth of the mine, no consideration was given to the fact that the cost of producing certain ores is far greater than the cost of producing other ores. Such a tax is a direct tax on the overhead as well as upon the profits; a tax upon labor as well as a tax upon the iron ore produced.

The next form of tonnage tax that appeared was the so-called net

profits tax. A bill for such a tax was first introduced at the general session of 1919 and failed of passage in the House.

A similar bill was again introduced at the special session of 1919. This bill did not propose a tax on actual net profits inasmuch as proper deductions were not allowed for in arriving at such net profits.

This bill did not meet the objections and criticisms made against the previous bills, mention of which I have heretofore made. The passage of the bill and its veto by Governor Burnquist are so recent and the attendant circumstances are so familiar to you all that further comment thereon seems unnecessary at this time.

There appear to be two reasons why the upright and earnest advocates of some sort of tonnage tax on iron ore adhere to their contentions. If more ore is mined from a property than that disclosed by the drill records and the estimates made therefrom for taxation purposes, such excess tonnage may be removed and escape taxation. This, however, does not appear to be the chief reason for the advocacy of a tonnage tax.

Argument is made that iron ore is a gift of Nature, a natural heritage of the state, a natural resource that is diminished by continued mining, leaving waste land in its wake, that it should therefore take a classification different from other forms of property which are the result of toil and that it should bear a heavier tax than other property in order to meet the depletion and disappearance of such natural wealth.

158 It has always seemed fair to me to place in a separate class for taxation purposes the gifts of Nature which the hand of man severs from the earth. Severance taxes, either entirely overlooked or avoided in Minnesota, have elsewhere been put into successful operation in order to rehabilitate Nature for its losses.

A severance tax would place a tax on iron ore as well as other materials taken from Mother Earth: as gravel, metals, sand, marl, clay, peat, timber, stone, gems, and so forth. I call your attention to this point by reason of the logic of the situation and not with the idea of confusing your minds or obscuring the issue of tonnage tax.

Within the last few days, the Minnesota Tax Commission, which is a bi-partisan body and one of the ablest and most important departments of our state government, in submitting its biennial report to this legislature discussed various questions involved in the taxation of iron ore and methods employed in such taxation throughout the United States. This authoritative and unprejudiced document deserves your very thoughtful consideration.

After studying this report I have come to the conclusion that any tonnage tax imposed upon iron ore under any new system established should be a net profits tax in lieu of all other state taxes upon the property, accompanied by a reduction in the percentage of the so-called ad valorem tax for other purposes. The ad valorem method of taxation should be retained for local purposes because if this is not done municipalities which have no income from indus-

tries other than mining, would be ruinously affected with regard to their schools, fire departments, police departments, and so forth, during periods when mines might be closed.

The gravest question for consideration in this connection, however, is the constitutionality of a law providing for such a tax. The Tax Commission in its report has the following to say regarding the constitutionality of a net profits tax.

"The question of the constitutionality of a net profits tax on iron ore, especially if the tax is imposed as a super-tax and not as a lieu tax, is one that should be carefully considered by the legislature. In essence a net profit tax on iron ore is a tax on the net income derived from the mining of the ore, and while it is possible that the legislature, under its constitutional power to classify prop-
159 erty, may make income a separate subject of taxation, there is serious doubt of its power to impose a tax on income derived from the mining of one kind of ore or from the development of one kind of natural wealth and exempt from its operation income derived from the mining of some other kind of ore, or from the development of some other kind of natural wealth, if indeed it can impose a tax on income at all unless the tax applies alike to all income regardless of its source. Attention is called to this phase of the question in order that it may be given such consideration as its importance seems to warrant."

The question of the constitutionality of a net profits tax, I know, will have the serious consideration of your Judiciary Committees. If these committees are of the opinion that a reasonable doubt exists as to the constitutionality of the proposed bill and if it becomes apparent that the passage of such a law will lead to prolonged litigation and tax confusion then certainly some other means should be adopted to carry out the obligation of this administration and of those individual members who are pledged to support such a measure, even though it should become necessary to submit to the people a constitutional amendment that would give validity to such a law.

Minnesota has a most enviable record for its unselfishness in the treatment of gifts made by Congress to the people of this state. Unlike other states, Minnesota has not squandered the proceeds received from lands, mines and timber, but has placed them in permanent trust funds for the benefit of our own and future generations. The unselfishness in this respect evidenced by the first legislatures of the State of Minnesota has won the admiration of every Commonwealth in the United States. While I reiterate that I do not desire to confuse the mind and befog the eye by proposing legislation which would complicate tonnage tax legislation, nevertheless, if a higher tax on such property is justifiable on the ground that the people of the state have a heritage in the iron ore deposits to be found within its borders, then it would seem that at least a part of the proceeds should be regarded as a trust fund and not merely a heritage to those who happen to be living while the iron ore is

being taken out of the ground. If it is a heritage, it is a heritage of future as well as present generations.

In considering any proposed change in the method of taxing mineral property, the present and future effect of such a change
160 on the mining industry of the state should be given careful thought. It should not be the policy of the state to impose unreasonable or excessive tax burdens on any class of property, or on any industry of the state. Nothing should be done that will in any way retard or make doubtful the development of the hundreds of millions of tons of low grade ores known to exist within the state. If these low grade ores can be made merchantable by some process of beneficiation, the life of the mining industry in the state will be indefinitely prolonged. A few years ago explorers for iron ore were numerous in Minnesota; today they are in Wisconsin, Michigan, New York, Pennsylvania and elsewhere, because they fear adverse legislation. In considering the future development of our enormous tonnages of low grade ores, it should be borne in mind that a net profits tonnage tax as recommended will always be taken into consideration by those developing these low grade ores and the heavier the tax burdens, the less development there will be.

No good citizen can object to a fair and equitable tax on his property, nor can the state afford to impose an unfair and inequitable tax on any class of property or on any industry within its borders.

Roads.

Better roads for Minnesota is one of the great problems in the development of our agricultural resources. On four different occasions, the people of Minnesota have amended the state constitution to bring about better road conditions. At the last general election by a vote of 526,936 to 199,603, a trunk highway system was approved; this system to be built and maintained by the state. Perhaps no legislation in the history of Minnesota will have greater effect upon future development of the state than will the act which you will pass in response to the mandate of the people expressed at the last election by their vote on the road amendment.

Transportation of farm produce and the distribution of commodities by motor trucks is already an established system in many parts of the country. The inauguration of a state highway system in Minnesota will have the same effect here as it has had elsewhere in affording a new transportation basis for commodities and peo-
161 ple. While this is doubtless the principal purpose of a road program, it should not be forgotten that Minnesota with its ideal summer climate, its thousands of beautiful lakes and its glorious scenery is destined to be the summer resort of United States as California and Florida are the winter resorts. Millions of dollars can be brought into Minnesota annually if tourists are encouraged. For this reason some thought may well be given to the location of these roads with a view of opening the beauties and attractions of our state to the people of our country. While sites for state parks in Minnesota have not always been selected with the purpose

of locating the most convenient and beautiful spots for parks which people might enjoy, nevertheless, we now have quite a large number of the state parks paid for and managed by the state. There is, however, no homogeneity in the system. A state park system which will afford camping grounds and resorts for the traveling public can well be established and its establishment and maintenance go hand in hand with the highway program.

The method of taxing automobiles in Minnesota at the present time is most unsatisfactory. The lowest license tax paid in any state in the union is paid in Minnesota, and the same tax is levied upon every vehicle in like sum. Certainly those who can afford to operate automobiles of high price, great weight, and high motive power should be compelled to pay a far greater tax than persons who operate slower, lighter and lower priced cars.

I feel confident that the details of taxation and method of administration will be wisely provided for and that a definite policy for detours will be adopted by you, and that, above all things, responsibility for the construction of the roads will be fixed in such manner and be subjected to such careful inspection and critical review as will absolutely guarantee to the people sound, intelligent and honest administration.

The construction of roads contemplated under Amendment No. 1 will afford in these days of depression great opportunities for labor and will have a strong tendency to stabilize wages.

Such roads when constructed will be of inestimable value to the agricultural interests of this state in relieving them from complete reliance on railroads for transportation purposes as well as
162 in making country life more attractive. It will bring the rural and urban populations of our state into more intimate relations and from the prosperity given to farming communities will flow great advantages to the cities and villages. A great road system will make Minnesota even more attractive and a better state in which to live.

There are many other problems deserving of attention but with which it is unnecessary for me to deal.

The last election witnessed the full enfranchisement of women in our state and nation. The unselfishness and patriotism with which they assumed the obligations of citizenship presage a greater future and a brighter history. Already the women are making their influence felt as a potent force interested in the enforcement of our laws on education, compulsory school attendance of eight months during each year, the same scale of wages for men and women be maintained for the same services, co-relation of education and labor with a view of enabling the young to select the avocations for which they are peculiarly fitted, community hospitals safeguarding particularly motherhood and infancy, mothers' pensions, and so forth.

One of the reasons for the calling of the special session of the legislature of 1919 was to provide for a bonus for the Minnesota boys who served in the great war. A cash bonus was granted but the law passed was very difficult to administer. The greatest diffi-

ulty encountered in its administration was the sale of bonds to rovide funds for paying the bonuses. May I ask that you at nce so amend the law as to make possible the immediate sale of he bonds that the boys may without further delay receive the onuses which they so well deserve.

It is most gratifying to know that the Interim Commission charged ith the duty of recommending a bill for Workmen's Compensation nsurance is bringing so unanimous a report to your body. The airness and industry evidenced by the House and Senate Committees on this subject deserve the greatest praise. Your body will give ust and intelligent consideration to labor in this and other measures.

The subject of clearing our cut-over lands in order that the prospective settler may have every advantage in establishing himself may well receive your fu-ther consideration.

Doubtless you will give attention to the reorganization of
163 our State Government. The state auditor's office should become an auditing office purely and a separate department should be established for the care of the natural resources of our state. The state should have a permanent budgetary secretary appointed by the Governor subject to ratification by the House and Senate. Unnecessary Boards and Commissions should be abolished. The practice of requiring state officials to serve as ex-officio members of Boards and Commissions seriously impairs their efficiency.

I have dealt at some length with the four leading problems discussed during the recent campaign, namely: election reforms, marketing of farm products, tonnage tax and roads. These four problems will doubtless have your consideration, and I am confident that you will solve them wisely.

Economically our country is still affected by the great world war in which the United States played such a great and unselfish role. The absence in the service of five million men for a period of nearly two years, as well as the demand for our manufactured articles in foreign countries caused an unusual shortage in American products, thus increasing their value in the home market, reducing the purchasing power of money and increasing the price of labor. With the lessening of the demand abroad and at home, there has come a decline in all values. As a result we must meet a period of economic depression and readjustment.

No appropriations should be made that are not absolutely necessary for the efficient administration of public affairs. In view of the prevailing high tax rates, public expenditures should be so regulated that we may reasonably look for a reduction in tax burdens.

Economic depression and readjustment necessarily mean temporary loss. Let us not give way to disappointment on this score. Let us not seek solace in the destruction of American ideals and institutions, but let us build upon the foundations of our forebears, believing that American ideals of life, liberty and the right to private property are still the best. Let us remember that "Righteousness exalteth a nation." The pledges of great parties are not to be

taken lightly. Party honor, like personal honor, must be preserved untarnished. The welfare of a state is greater than the am-
164 bitions of an individual. To your hearts and brains has been committed the solution of the problems that are troubling the men and women of Minnesota. I am confident that you will meet the issues honestly, consider them fairly and decide them in accordance with the wishes of the right-thinking electorate of this state.

165 PLAINTIFF'S EX. D.

H. F. #26. Bendixen. Taxes.

A Bill for an Act Providing for the Levy and Collection of a Tax upon the Value of Ores from Persons, Copartnerships, Associations, Joint-stock Companies, and Corporations Engaged in the Mining or Production Thereof.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Every person, copartnership, association, joint stock company or corporation engaged in the mining or production in this state of iron ores shall pay to the State of Minnesota, for state purposes only, a tax which shall be in lieu of all state taxes upon iron ore or other ores, whether the same be in the form of real or personal property, equal to eight (8) per cent of the value of all ores produced and shipped; said tax shall become due and payable from such persons, copartnership, association, joint stock company, or corporation on June 1st of each year for the calendar year covered by the report thereupon to be filed as hereinafter provided.

Section 2. The value of ore for the purpose of determining the amount of taxes to be paid under the provisions of Section 1 of this act shall be ascertained by subtracting from the prices received, or to be received, for the ore at the place of sale,

1. The amount of royalty paid, if any.

2. The cost of labor for separating the ore from the ore deposit and placing it in cars fro shipment from the mine.

3. The cost of washing, drying, or otherwise beneficating such ore, if the same is washed, fried or beneficated.

4. The cost of transporting the ore from the mine to the place of sale.

5. If taken from open pit mines an amount for each ton mined equal to the cost of removing the overburden divided by the number of tons of ore uncovered; the amount of ore uncovered to be determined by the Minnesota Tax Commission.

8. If taken from underground mines, an amount for each ton of ore mined equal to the cost of sinking and constructing
166 shafts and running drifts to take out the ore divided by the number of tons that can be advantageously taken out through such drifts and shafts; the number of tons of ore than can be advantageously taken out in each such case to be determined by the Minnesota Tax Commission.

In all cases where ore is smelted before sale or disposed of otherwise than by ordinary sale, the price of the same for the purposes of this act shall be the average market price for like kinds and grades of ore during the calendar year in which such ore was mined.

Sec. 3. Every person, copartnership, association, joint stock company or corporation engaged in such mining or production of ore shall, on or before the first day of February, 1922, and annually thereafter on or before the first day of February of each year, file with said Commission a correct report covering the preceding calendar year. Such report shall set forth:

1. The name and location of the mine or mines owned or operated by such person, copartnership, association, joint stock company or corporation.

2. The total number of tons of ore mined and the amount shipped and sold during the calendar year for which the report is made.

3. The percentage of iron, manganese, or other valuable mineral contained in the ore sold or mined.

4. The amount received for all ore sold during the calendar year covered by the report.

5. The cost per ton of mining, showing the same in detail, and the amount paid per ton for the carriage of said ore from the mouth or entrance of the mines to the place of sale, and

6. Such other and further information as the Minnesota Tax Commission may require.

Such report shall be verified by the oath of the person, or the president, secretary, superintendent or managing agent of the copartnership, association, joint stock company, or corporation making the same.

Sec. 4. Upon the receipt by the Minnesota Tax Commis-
167 sion of such report it shall determine from such information as it may possess or obtain, whether the same is correct or otherwise, and if found correct, said tax commission shall determine therefrom the amount of tax due from such person, copartnership, association, joint stock company, or corporation, and shall enter the amount thereof in its records and shall make its certificate of taxes due thereon from such person, copartnership, association, joint stock company, or corporation on or before May 1st of each year and file

the same with the state auditor and a duplicate thereof with the state treasurer; and the tax commission shall have power, in case it shall deem said report incorrect, to make its findings as to the amount of such taxes due after hearing upon notice to the person, copartnership, association, joint stock company or corporation interested, and its findings shall have the same effect as the determination of the amount of such taxes upon a report made as hereinbefore provided.

Sec. 5. If any such person, copartnership, association, joint stock company or corporation subject to this act shall fail to make the report provided for in section 3 of this act, at the time and in the manner therein provided, there shall accrue upon the tax herein imposed a penalty in an amount equal to ten per cent (10%) of the tax imposed to be added to and collected with such tax. The tax commission shall in such case determine the kind and amount of the ores mined or produced, and the amount shipped and sold, together with the value thereof, and shall fix the tax due thereon from such person, copartnership, association, joint stock company or corporation, together with such penalty, upon such information as it may poessess or obtain and shall proceed as provided by the law when such taxes are determined upon the sworn report of the person, copartnership, association, joint stock company or corporation owning or operating such mine or mines. Such findings shall stand in the place of the report required by this act to be made by such person, copartnership, association, joint stock company or corporation, and shall be in all courts of the state, for all purposes prima facie evidence of the facts therein stated.

Sec. 6. In case the tax hereinbefore provided for is not
168 paid on or before the first day of June of the year when due and payable, a penalty of ten per cent (10%) shall immediately accrue thereon.

Sec. 7. On or before the tenth day of June in each year, the state auditor shall make his draft upon each person, copartnership, association, joint stock company or corporation delinquent in the payment of such tax for the amount of taxes and penalty, or penalties, due thereon, and place the same in the hands of the state treasurer for collection.

The draft of the state auditor for the tax and penalties imposed by the foregoing provisions of this act shall be prima facia evidence in any court where proceedings may be brought for its enforcement that the amount therein stated is due the state from the person, copartnership, association, joint stock company, or corporation against whom the same is drawn.

Sec. 8. The state treasurer within ten days after the receipt of the draft mentioned in Section 7 of this act, shall notify by mail the taxpayer designated therein of the amount thereof, and if not paid within thirty days after presentation, shall deliver the same to the attorney general, whose duty it shall be to bring an action thereon in the district court of Ramsey county, or of the county where such

ores are mined or produced, for the amount of such draft, together with interest and costs of the proceedings. Such tax shall draw interest at the rate of one per cent per month, commencing thirty (30) days after the same falls due. The judgment of the court when so obtained and properly docketed shall be a lien upon the interest of the taxpayers in the land from which the ores may have been mined or produced from the time the tax falls due and upon any machinery or apparatus used in connection therewith; and said lien shall continue without limitation with interest at the rate of one per cent per month and the said property may be sold in satisfaction of such judgment in the same manner as provided by law from the sale of property upon execution.

Sec. 9. And person, copartnership, association, joint stock company or corporation who for the purpose of evading the payment of the tax hereinbefore provided or any part thereof, makes any false return or report or by means of any actual or pretended sale of any ore mined within the state, procures a valuation on said ore other than the value thereof as hereinbefore provided shall pay to the state a tax on such value as determined by the Minnesota Tax Commission and in addition thereto a penalty of fifty per cent (50%) of the amount of said tax; and any person, or the president, secretary, superintendent, treasurer or managing agent of any copartnership, association, joint stock company or corporation owning or operating any such mines producing ores, who shall knowingly make or sign under oath any false return of the kind and amount of ores produced therefrom, and of the value thereof, or who shall knowingly submit any other false information required by this act, shall be deemed guilty of perjury, and upon conviction thereof shall be punished therefor as provided by law.

Sec. 10. All books, waybills, inventories, correspondence and memoranda relating to or used in the transaction of the business of any person, copartnership, association, joint stock company or corporation owning or operating any such mines or mine, shall on demand by the Minnesota Tax Commission or its authorized representative, be open to its inspection or examination. If any such person, or the president, superintendent, treasurer, secretary or managing agent or person having charge of said papers and books of such person, copartnership, association, joint stock company or corporation shall neglect or refuse on demand of the said tax commission or its authorized representative, access to the papers and books, aforesaid, he or they shall be deemed guilty of a misdemeanor, and upon the conviction thereof shall be punished therefor as provided by law.

Sec. 11. All taxes levied and collected under the foregoing provisions of this act shall be paid into the state treasury and credited to the general revenue fund.

Sec. 12. This act shall take effect and be in force from and after its passage.

170 205.

State of Minnesota.

Forty-second Session.

H. F. No. 40.

Introduced by Mr. Parker January 6, 1921.
Referred to Committee on Taxes and Tax Laws.
Reported back February 10, 1921.
Matter in italics is new; matter in capitals when in ( ) is old law to be omitted.

A Bill for an Act Providing for the Levy and Collection of a Tax on Royalty Received by the Owner of Any Right, Title, or Interest in Land Situate in This State for Permission to Explore, Mine, Take Out and Remove Ore from the Same.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. There shall be levied and collected upon all royalty received during the year ending December 31st, 1921, and upon all royalty received during each calendar year thereafter, for permission to explore, mine, take out and remove ore from land in this state, a tax of five (5) per cent.

Sec. 2. For all purposes of this act the word "royalty" shall be construed to mean the amount received by any person having any right, title or interest in or to any tract of land in this state for permission to explore, mine, take out and remove ore therefrom; and the word "person" shall be construed to include individuals, co-partnerships, associations, companies and corporations.

Sec. 3. Every person to whom royalty is paid shall on or before the first day of February 1922 and annually thereafter on or before the first day of February of each year, make and file with the Minnesota Tax Commission a report verified by the person making the same and setting forth the amount of royalty received by such person during the preceding calendar year, and such other information as said commission may require.

Sec. 4. It shall be the duty of every person paying royalty, on or before the first day of February 1922 and annually thereafter on the first day of February in each year, to make and file with the Minnesota Tax Commission, a report covering the preceding calendar year, verified by the oath of the person making the same and setting forth:

1. The number of tons mined from each tract of land for the right to mine and remove ore on which such person pays royalty.

2. The amount of royalty paid on each tract of land separately.

3. The name and postoffice address of each person to whom royalty is paid, and

4. Such other information as said commission may require.

Sec. 5. Upon the receipt by the Minnesota Tax Commission of such report it shall determine from such information as it may possess or obtain, whether the same is correct or otherwise, and if found correct, said tax commission shall determine therefrom the amount of
171 tax due from such person, and shall enter the amount thereof in its records and shall make its certificate of taxes due thereon from such person, and on or before the first day of May of each year file the same with the state auditor and a duplicate thereof with the state treasurer; and the tax commission shall have power, in case it shall deem said report incorrect, to make its findings as to the amount of such taxes due after hearing upon notice to the person interested, and its findings shall have the same effect as the determination of the amount of such taxes upon a report made as hereinbefore provided. A person subletting land for the use of which he receives royalty shall be required to pay taxes only on the difference between the amount of royalty paid by him and the amount received.

Sec. 6. If any person subject to the tax provided by this act shall fail to make the report provided for in Section 3 of this act, at the time and in the manner therein provided, there shall accrue upon the tax herein imposed a penalty in an amount equal to ten per cent (10%) of the tax so imposed to be added to and collected with such tax. The tax commission shall in such case determine the amount of the ores mined or produced, together with the royalty paid thereon and shall fix the tax due thereon from such person, together with such penalty, upon such information as it may possess or obtain and shall proceed as provided by law when such taxes are determined upon the sworn report of the person receiving such royalty. Such findings shall stand in the place of the report required by this act to be made by such person and shall be in all courts of the state, for all purposes, prima facie evidence of the facts therein stated.

Sec. 7. Such tax shall be due and payable on the first day of June 1922 and annually thereafter on the first day of June, and if not paid on or before that date a penalty of ten (10) per cent shall immediately accrue thereon.

Sec. 8. The situs of royalty for all persons of this act shall be in this state; and the tax herein provided for shall be a specific lien from the time the same is due and payable upon all and singular the right, title and interest of the person to whom such royalty is payable, in and to the land for permission to explore, mine, take out and remove ore on which the royalty is paid.

Sec. 9. On or before the tenth day of June in each year the state auditor shall make his draft upon each person delinquent in the payment of such tax for the amount of taxes and penalty, or penalties, due thereon, and place the same in the hands of the state treasurer for collection.

The draft of the state auditor for the tax and penalties imposed by the foregoing provisions of this act shall be prima facie evidence in any court where proceedings may be brought for its enforcement that the amount therein stated is due the state from the person against whom the same is drawn.

Sec. 10. The state treasurer within ten days after the receipt of the draft mentioned in Section 9 of this act shall notify by mail the taxpayer designated therein of the amount thereof and if not paid within thirty days after presentation shall deliver the same to the attorney general whose duty it shall be to bring an action thereon in the district court of Ramsey County for the amount of such draft, together with interest and costs of the proceedings. Such tax shall draw interest at the rate of one per cent per month, commencing thirty (30) days after the same falls due; and the judgment of the court when so obtained and properly docketed shall be a lien upon all right, title and interest of the taxpayer to the land upon which such tax is a lien from the time the same is docketed; and said lien shall continue without limitation with interest at the rate of one per cent per month and the said property may be sold in satisfaction of such judgment in the same manner as provided by law for the sale of property upon execution.

172 Sec. 11. Any person who for the purpose of evading the payment of the tax herein provided or any part thereof makes any false return or report shall in addition to the tax provided by this act pay a penalty of fifty (50) per cent of the amount of said tax; and any person who shall knowingly make under oath any false report or return required by this act shall be guilty of perjury and upon conviction thereof shall be punished therefor as provided by law.

Sec. 12. All books, waybills, inventories, correspondence and memoranda relating to or used in the transaction of the business of any person paying or receiving royalty on ore mined in this state, shall upon request of the Minnesota Tax Commission be open to its inspection or examination. If any such person shall neglect or refuse on request of the Minnesota Tax Commission access to the papers and books aforesaid, he shall be guilty of a misdemeanor and upon conviction thereof shall be punished therefor as provided by law.

Sec. 13. All taxes assessed, levied and collected under the provisions of this act shall be paid into the state treasury and credited to the general revenue fund.

Sec. 14. This act shall take effect and be in force from and after its passage.

173 18.

State of Minnesota.

Forty-second Session.

H. F. No. 137.

Introduced by Messrs. Welch, Gislason, C. M., Spindler, Arens, Miner and Samec January 12, 1921.

Referred to Committee on Taxes and Tax Laws.

Matter in italics is new; matter in capitals when in () is old law to be omitted.

A Bill for an Act Providing for the Levy and Collection of a Tax upon the Value of Ores from Persons, Associations, Joint Stock Companies and Corporations Engaged in the Mining or Production Thereof.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Every person, association, joint stock company or corporation engaged in the mining or production in this state of iron ore or other ores shall pay to the State of Minnesota, for state purposes only, a tax which except as provided in Section 5 of this act, shall be in addition to the taxes levied and collected upon an ad valorem basis upon such mines and mining property and the appurtenances thereunto belonging, equal to ten per cent of the value of all ores produced and shipped from such mine or mines; said tax shall become due and payable from such person, association, joint stock company, or corporation on June 1st of each year for the calendar year covered by the report thereupon to be filed as hereinafter provided. Person includes individuals, corporations, partnerships and other associations.

Sec. 2. The value of ore for the purposes of determining the amount of taxes to be paid under the provisions of Section 1 of this act shall be ascertained by subtracting from the prices received, or to be received, for the ore at the place of sale,

1. The amount of royalty, if any, paid for permission to remove ore.

2. The cost of labor for separating the ore from the ore deposit and placing it in cars for shipment from the mine.

3. The cost of washing, drying, or otherwise beneficiating such ore, if the same is washed, dried or beneficiated.

4. The cost of transporting the ore from the mine to the place of sale.

5. If taken from open pit mines an amount for each ton mine equal to the cost of removing the overburden divided by the numb of tons of ore uncovered; the amount of ore uncovered to be det mined by the Minnesota Tax Commission.

6. If taken from underground mines, an amount for each ton ore mined equal to the cost of sinking and constructing shafts a running drifts to take out the ore divided by the number of to that can be advantageously taken out through such shafts and drift the number of tons of ore than can be advantageously taken out each such case to be determined by the Minnesota Tax Commissi

In all cases where ore is smelted before sale or disposed of othe wise than by ordinary sale, the price of the same for the pu
174 poses of this act shall be the average market price for li kinds and grades of ore during the calendar year in whi such ore was mined.

Sec. 3. Every person, association, joint stock company or corp ration engaged in such mining or production of ores shall, on or b fore the first day of February, 1920, and annually thereafter on before the first day of February of each year, file with said Commi sion a correct report covering the preceding calendar year. Such r port shall set forth:

1. The name and location of the mine or mines owned or operat by such person, association, joint stock company or corporation.

2. The total number of tons of ore mined and the amount shipp and sold during the calendar year for which the report is made.

3. The percentage of iron, manganese, or other valuable miner contained in the ore sold or mined.

4. The amount received for ore sold during the calendar year co ered by the report.

5. The cost per ton of mining, showing the same in detail, and t amount paid per ton for the carriage of said ore from the mouth entrance of the mines to the place of sale, and

6. Such other and further information as the Minnesota Tax Co mission may require.

Such report shall be verified by the oath of the person, or the pre dent, secretary, superintendent or managing agent of the associati joint stock company, or corporation making the same.

Sec. 4. Upon the receipt by the Minnesota Tax Commission such report it shall determine from such information as it may p sess or obtain, whether the same is correct or otherwise, and if fou correct, said tax commission shall determine therefrom the amo of tax due from such person, association, joint stock company corporation, and shall enter the amount thereof in its records a shall make its certificate of taxes due thereon from such person,

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sociation, joint stock company or corporation and on or before May 1st of each year and file the same with the state auditor and a duplicate thereof with the state treasurer; and the tax commission shall have power, in case it shall deem said report incorrect, to make its findings as to the amount of such taxes due after hearing upon notice to the person, association, joint stock company or corporation interested, and its findings shall have the same effect as the determination of the amount of such taxes upon a report made as hereinbefore provided.

Sec. 5. Before filing with the state auditor and state treasurer the certificate required by Section 4 of this act, it shall be the duty of the Minnesota Tax Commission to compute the amount of taxes assessed and levied on the ad valorem basis for the preceding calendar year on the taxable value of the ore in each producing mine and in each stockpile and to deduct from such certificate an amount equal to the taxes so assessed and levied on such ad valorem basis on the tonnage shipped from any such producing mine or from any such stockpile during the preceding calendar year. The purpose of this section is to impose a uniform tax on mined ores and to avoid collecting a double tax annually on such ores.

Sec. 6. If any such person, association, joint stock company or corporation subject to this act shall fail to make the report provided for in section 3 of this act, at the time and in the manner therein provided, there shall accrue upon the tax herein imposed a penalty in an amount equal to ten per cent (10%) of the tax so imposed to be added to and collected with such tax. The tax commission shall in such case determine the kind and amount of the ores mined or produced, and the amount shipped and sold, together with the value thereof and shall fix the tax due thereon from such person, association, joint stock company or corporation, together with such penalty, upon such information as it may possess or obtain and shall proceed as provided by law when such taxes are determined upon the sworn report of the person, association, joint stock company or corporation owning or operating such mine or mines. Such findings shall stand in the place of the report required by this act to be made by such person, association, joint stock Company or corporation and shall be in all courts of the state, for all purposes, prima facie evidence of the facts therein stated.

Sec. 7. In case the tax hereinbefore provided for is not paid on or before the first day of June of the year when due and payable, a penalty of ten per cent (10%) shall immediately accrue thereon.

Sec. 8. On or before the tenth day of June in each year, the state auditor shall make his draft upon each person, association, joint stock company or corporation delinquent in the payment of such tax for the amount of taxes and penalty, or penalties, due thereon, and place the same in the hands of the state treasurer for collection. The draft of the state auditor for the tax and penalties imposed by the foregoing provisions of this act shall be prima facie evidence in

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any court where proceedings may be brought for its enforcemen
the amount therein stated is due the state from the person, a
aion, joint stock company or corporation against whom the sa
drawn.

Sec. 9. The state treasurer within ten days after the receipt o
draft mentioned in Section 8 of this act shall notify by mail the
payer designated therein of the amount thereof and if not
within thirty days after presentation shall deliver the same t
attorney general whose duty it shall be to bring an action th
in the district court of Ramsey county, or of the county where
ores are mined or produced, for the amount of such draft, tog
with interest and costs of the proceedings. Such tax shall dra
terest at the rate of one per cent per month, commencing thirty
days after the same falls due. The judgment of the court wh
obtained and properly docketed shal- be a lien upon the inter
the taxpayers in the land from which the ores may have been m
or produced from the time the tax falls due and upon any machi
or apparatus used in connection therewith; and said lien shall
tinue without limitation with interest at the rate of one per cen
month, and the said property may be sold in satisfaction of
judgment in the same manner as provided by law for the sa
property upon execution.

Sec. 10. Any person, association, joint stock company or cor
tion who for the purpose of evading the payment of the tax he
before provided or any part thereof, makes any false return or s
or by means of any actual or pretended sale of any ore mined wi
the state, procures a valuation on said ore other than the value th
as hereinbefore provided shall pay to the state a tax on such
as determined by the Minnesota Tax Commission and in add
thereto a penalty of fifty per cent (50%) of the amount of
tax; and any person, or the president, secretary, superintend
treasurer or managing agent of any association, joint stock com
or corporation owning or operating any such mines producing
who shall knowingly make or sign under oath any false return o
kind and amount of ores produced therefrom, and of the
thereof, or who shall knowingly submit any other false inform
required by this act, shall be deemed guilty of perjury and upon
viction thereof shall be punished therefor as provided by law.

Sec. 11. All books, waybills, inventories, correspondence and
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person, association, joint stock company or corporation owni
operating any such mines or mine, shall on demand by the M
sota Tax Commission or its authorized representative, be open
inspection or examination. If any such person, or the preside
perintendent, treasurer, secretary or managing agent o
176 son having charge of said papers and books of such p
association, joint stock company or corporation shall r
or refuse on demand of the said tax commission or its auth
representative, access to the papers and books, aforesaid, he o

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l be deemed guilty of a misdemeanor, and upon the conviction reof shall be punished therefor as provided by law.

ec. 12. All taxes levied and collected under the foregoing pro-ons of this act shall be paid into the state treasury and credited he general revenue fund.

ec. 13. This act shall take effect and be in force from and after passage.

131.

State of Minnesota.

Forty-second Session.

H. F. No. 458.

ntroduced by Mr. Warner February 1, 1921.
eferred to Committee on Taxes and Tax Laws.
latter in italics is new; matter in capitals when in () is old law e omitted.

Bill for an Act Providing for the Levy and Collection of a Tax Upon the Profits Arising from the Mining of Iron or Other Ores Within the State, Disposing of the Proceeds of Such Tax, and the Creation of the Permanent Mineral Land Fund as an Addition to Article Nine (9) of the Constitution of Minnesota.

Whereas, Minnesota has been richly endowed by many natural ources, and

Whereas, Iron and other ores when mined and removed from the are gone forever, never to be reproduced, and

Whereas, It has been in the past and is at this time the correct icy of the people of this state to reserve and dedicate a portion of ature's gifts to the use, benefit and support of future generations; refore

e it enacted by the Legislature of the State of Minnesota:

ection 1. Every person, copartnership, association, joint stock pany or corporation engaged in the mining or production in this e of iron or other ores shall, during the year 1923 and annually reafter, pay to the State of Minnesota a tax of five (5%) per cent n the net profits arising from the mining and shipping of such n or other ores, which tax shall be in addition to the taxes now d upon a valuation or ad valorem basis, as provided by law.

ec. 2. In determining the profits subject to the tax provided for ection one (1) of this act, the following items shall be deducted n the prices received or to be received for the ore at the place le:

The amount of royalty paid, if any.

2. The cost of labor for separating the ore from the ore deposit and placing it in the cars for shipment from the mine.

3. The cost of washing, drying or otherwise beneficiating such ore, if the same is washed, dried or beneficiated.

4. The cost of transporting the ore from the mine to the place of sale.

5. If taken from open pit mines an amount for each ton mined equal to the cost of removing the overburden divided by the number of tons of ore uncovered, the amount of ore uncovered to be determined by the officers or department designated by the Legislature.

6. If taken from underground mines, an amount for each ton of ore mined, equal to the cost of sinking and constructing shafts and running drifts to take out the ore, divided by the number of tons that can be advantageously taken out through such shafts or
178 drifts; the number of tons of ore that can be advantageously taken out in each such case to be determined by the officers or department designated by the Legislature.

In all cases where ore is smelted before sale or disposed of otherwise than by ordinary sale, the price of the same, for the purpose of this act, shall be the average market price for like kinds and grades of ore during the calendar year in which such ore was mined.

Sec. 3. Every person, copartnership, association, joint stock company or corporation engaged in such mining or production of iron or other ores shall, on or before the first day of February, 1924, and annually thereafter on or before the first day of February of each year, make and file with the officer or department designated by the Legislature a correct report covering the preceding calendar year. Such report shall set forth:

1. The name and location of the mine or mines owned or operated by such person, copartnership, association, joint stock company or corporation.

2. The total number of tons of ore mined and the amount shipped and sold during the calendar year for which the report is made.

3. The average percentage of iron, ma-ganese or other valuable mineral contained in the ore sold and mined.

4. The gross amount received for all ore sold during the calendar year covered by the report.

5. The cost per ton of mining, showing the same in detail, and the amount paid per ton for the carriage of said ore from the mouth or entrance of the mine to the place of sale.

6. The total amount of deduction under section two (2) of this act on all ores mined, shipped and sold during the year.

. The total net amount of profit arising from all ores so mined, ped and sold during the year and thus taxable under section (1) his act.

. And such other and further information as may be required by per state authorities.

Such report shall be verified by the person, or the President, Sec- ary, Superintendent or Managing Agent of the copartnership, ociation, joint stock company or corporation making the same.

Sec. 4. If any person, copartnership, association, joint stock com- y or corporation subject to this act shall make a false report or l to make the report as in this act provided within the time and the manner required, or shall fail to pay the tax within the time uired in this act, they shall receive such punishment or penalty the Legislature may prescribe.

Sec. 5. The Legislature shall by law make the necessary provisions ering the time and manner of payment and all other regulations carry out the proper operation of this act.

Sec. 6. When the tax herein provided shall have been determined d paid into the state treasury it shall be apportioned as follows: e-half to the credit of a fund to be called "The Permanent Mineral nd Fund" and one-half to the General Revenue Fund.

Sec. 7. The Permanent Mineral Land Fund created in section six) of this act shall never be reduced or impaired, but shall remain perpetual trust fund of the state. The moneys derived from this t accruing to said trust fund may be invested by the Investment ard in bonds of states, counties, cities, villages, townships, school stricts and county drainage bonds, and also in first mortgage loans on improved farms within the state upon such terms as the Legis- ture may prescribe. The income from the Permanent Mineral and Fund shall be credited to the General Revenue Fund.

Sec. 8. This act shall be submitted to the people of this state for eir approval or rejection at the general election for the year 1922. The Secretary of State shall cause to be printed in bold faced 79 type upon the ballot used in voting for state officers, or upon a separate ballot if so provided by law at said election, in anner conformable with the requirements of the general election w, the words: "For taxation of the profits on iron or other ores ined within the state in addition to present ad valorem or valuation xes and dedicating one-half of proceeds to General Revenue Fund d one-half to the Permanent Mineral Land Fund

Yes——
No ——"

nd each voter voting at such election shall designate his vote by a ross mark made opposite one or the other of the owrds "yes" or o" and the said election shall in all respects conform as near as

may be to the requirements of the general election law, and the returns of said election shall be made, canvassed and certified and the results thereof declared in the same manner provided by law for returning, certifying and canvassing votes for state officers.

Sec. 9. If it shall appear from a canvass of the votes at said election that a majority of all the voters voted in favor of this act, then said act shall become a part of the Constitution of Minnesota and be added to section nine (9) thereof.

180 H. F. #284. Taxes and Tax Laws. Trowbridge.

A Bill for an Act Providing for the Levy and Collection of a Tax for State Purposes Only upon Iron Ore and Other Minerals, Sandstone, Granite, Limestone and Other Stone, Sand and Gravel, Clay, Peat and Marl, Requiring Those Engaged in the Severance of and Dealing in Such Products to Make Reports of Their Business and Providing Penalties for Violations of the Provisions Hereof.

Be it Enacted by the Legislature of the State of Minnesota:

Section 1. There is hereby imposed upon all iron ore and other minerals, sandstone, granite, limestone and other stone, sand and gravel, clay, peat and marl severed from the soil in any year a tax equal to eight per cent (8%) of the value of such products, as such value is hereinafter defined.

Section 2. Said tax shall be for state purpose only and shall be in lieu of all state taxes upon such products, whether the same be in the form of real or personal property, and the same shall become due and payable on May 1st of each year for the calendar year covered by the report hereinafter provided to be filed, and shall until paid, be a lien upon such products and upon the real estate from which the same was severed.

Section 3. The value of such products for the purpose of determining the amount of taxes to be paid under the provisions of Section 1 hereof shall be ascertained by subtracting from the price received or to be received therefor, or, if no sale is made thereof, from the market value thereof, the following items, so far as the same enter into the cost of severing and marketing such products:

1. The amount of royalty paid—if any.

2. The cost of labor for and of tools, supplies and materials used in severing such products from the soil and placing it in cars or other vehicles for transportation.

3. The cost of crushing, washing, drying or otherwise treating or benefic-ating such products.

4. The cost of transporting such products from the place of severance to the place of sale (including any taxes paid the U. S. Government upon transportation charges.

5. Sales Agents' commissions, not exceeding five per cent (5%) of the selling price.

6. Insurance.

7. Cost of sampling and analyzing such products.

181 8. If overburden is removed in preparation for the mining or severance of such products an amount for each ton, cubic foot, cubic yard, cord or other proper unit of measurement of the various products severed, equal to the cost of removing the overburden, divided by the number of units of measurement of the products uncovered, the amount of such products uncovered to be determined by the Tax Commission.

If taken from underground mines or workings, an amount for each unit of measurement of such products equal to the cost of sinking and constructing shafts and running drifts divided by the number of units of measurement that can be taken out through such drifts and shafts, such amount to be determined in each case by the Tax Commission.

9. The amount of all local taxes paid during the year on the real estate from which products were severed and upon structures and improvements thereon used in connection with the business of severing such products.

10. A proper amount to cover the annual depreciation or obsolescence of structures, improvements, machinery and other equipment used in the operation of severing such products, such amount to be determined by the Tax Commission.

11. A proper amount to cover general executive, administrative, managerial, supervisory and engineering costs and expenses of the business, such amount to be determined by the Tax Commission.

12. In all cases where such products are smelted or otherwise treated before sale, the value of the same shall be the average market value of such products during the year in which the same was severed.

Section 4. Every person engaged in the business of severing any such product shall on or before the first day of February 1922, and annually thereafter, on or before the first day of February in each year, make and furnish an itemized statement or report to the Tax Commission, and a duplicate thereof to the Public Examiner in such form as the Public Examiner, with the approval of the Tax Commission, shall prescribe, covering the preceding calendar year and containing a true, just and detailed report of such business for and during the year ending December 31st preceding. Such report shall set forth:

1. The name and location of the mine, quarry, pit, bed or other working owned or operated by such person.

2. The quantity of any such product severed as aforesaid and the quantity thereof shipped or sold during the calendar year, for which the report is made.

3. The analysis, grade, class and character of such products so severed or shipped.

4. The amount received for such products during the calendar year covered by the report.

5. The cost of production comprising the amounts allowed as deductions in Section 3 hereof set forth in detail by items.

182 6. Such other and further information as the Tax Commission may require.

Such reports shall be verified by the oath of the person making the same, who, in the case of a co-partnership, association, joint stock company or corporation, shall be an executive officer or managing agent thereof.

Section 5. In all cases where any of such products are purchased after the same have been severed from the soil, the purchaser thereof shall furnish to the Tax Commission, on forms, approved by it, an itemized statement or report, which report shall contain the quantity of such products purchased, the price paid therefor, the name of the owner from whom the same were purchased and such other information as the Tax Commission may require. Such a report shall be verified in the same manner as the report provided for in Section 4 hereof.

Section 6. Upon the receipt by the Minnesota Tax Commission of such report it shall determine from such information as it may possess or obtain, whether the same is correct or otherwise, and the Public Examiner shall, upon request of said Commission, examine such report and also the books and records of any such person and make a report thereon to such Commission; said Tax Commission shall thereupon determine the amount of tax due from such person and shall enter the amount thereof in its records, and on or before May 1st of each year shall make its certificate of taxes due thereon from such person, and file the same with the State Auditor and a duplicate with the State Treasurer.

Section 7. If any such person subject to this Act shall fail to make the report provided for in Section 4 hereof at the time, and in the manner therein provided, there shall accrue upon the tax herein imposed a penalty in an amount equal to ten per cent (10%) of the tax so imposed to be added to and collected with such tax. The Tax Commission shall—in such cases—determine the kind and amount of such products so severed, and the quantity thereof sold or transported, together with the value thereof and shall fix the tax due thereon from such person, together with such penalty upon such information as it may possess or obtain, and shall proceed as provided by law when such taxes are determined upon the sworn re-

port of the person owning or operating such mine, quarry, pit, bed or other working. Such finding shall stand in the place of the report required by this Act, to be made by such person and shall be in all courts of the State for all purposes prima facie evidence of the facts stated.

Section 8. On or before the tenth day of May in each year the State Auditor shall make his draft for all taxes certified as aforesaid by the Tax Commission, and place the same in the hands of the State Treasurer for collection.

The draft of the State Auditor for the tax and penalty, if any, imposed by the foregoing provisions of this Act, shall be prima facie evidence to any court where the proceedings shall be brought for its enforcement that the amount therein stated is due the State from the person against whom same is drawn.

Section 9. The State Treasurer shall immediately notify—by mail—the taxpayer designated in such draft of the amount thereof, and the same shall become due and payable on or before the first day of June thereafter; if the same is not paid on or before the first day of July thereafter a penalty of ten per cent (10% shall accrue thereon, and the Treasurer shall deliver the same to the Attorney General, whose duty it shall be to bring an action in the District Court of Ramsey County, or of the county where such products were severed for the amount of such draft, together with penalties, interest and costs of the proceedings. Such taxes shall draw
183 interest at the rate of one per cent (1%) per month from and after said first day of July.

The judgment of the court, when so obtained and docketed, shall be a lien on the interest of the tax payer in the land from which said products were severed from the time the tax falls due, and upon any machinery, apparatus or other equipment used in connection therewith; and such lien shall continue without limitation, and said property may be sold in satisfaction of said judgment in the same manner as is provided by law for the sale of property on execution.

Section 10. Any person who, for the purpose of avoiding the payment of the tax hereinbefore provided, or by any part thereof, makes any false return or report, or by means of any actual or pretended sale of such severed products procures a valuation other than the value thereof as hereinbefore provided, shall pay to the State a tax on such value as determined by the Minnesota Tax Commission, and in addition thereto a penalty of fifty per cent (50%) of the amount of such tax and any person, or the President, Secretary, Superintendent, Treasurer or Managing Agent of any such person owning or operating any nine, quarry, pit, bed or other working from which any of such products were severed, shall knowingly make any false return of the kind of products severed therefrom, or of the value thereof, or who shall knowingly submit any false information required by this Act shall be deemed guilty of perjury, and upon conviction thereof shall be punished as provided by law.

Section 11. Any such mine, quarry, pit, bed or other working, and all books, waybills, inventories, correspondence and other documents relating to or used in the transaction of the business of any person owning or operating any such mine, quarry, pit, bed or other working shall on demand of the Minnesota Tax Commission be open to its inspection or examination. If any such person or the officer or Managing Agent having charge of said mine, quarry, pit, bed or other working, or of the books, waybills, inventories, correspondence and other documents of such person, shall refuse such access, inspection or examination he, or they, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished therefor, as provided by law.

Section 12. The taxes levied and collected under the provisions of this Act shall be apportioned as follows: An amount equal to what the different special state funds derived from millage tax levies, except the state road and bridge fund, would receive from the same millage tax levied upon the property, from which said products were severed, as that imposed on other property subject to the general ad valorem tax shall be credited to each of such funds, and the balance, if any, shall be credited to the general revenue fund of the state.

Section 13. The term "person" as used in this Act, shall mean and include natural persons—co-partnerships, associations, joint stock companies and corporations.

The term "Tax Commission" shall mean the Minnesota Tax Commission.

The term "products" shall mean and include all natural products, such as iron ore and other materials, sandstone, granite, limestone, and all other stone, sand, gravel, clay, peat and marl and all similar material.

Section 14. This Act shall take effect and be in force from and after its passage.

184 A Bill for an Act Providing for the Imposition of a Tax Upon Persons, Corpartnerships, Companies, Joint-stock Companies, Corporations, and Associations, However Organized, Engaged in Mining or Producing Iron Ore and Other Ores, for Enforcing and Collecting the same, and prescribing Penalties for the Violation Thereof.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Every person engaged in the business of mining or producing iron ore or other ores in this state shall pay to the state of Minnesota an occupation tax equal to 6 per cent of the valuation of all ores mined or produced, which said tax shall be in addition to all other taxes provided for by law, said tax to be due and payable from such person on May 1 of the year next succeeding the calendar

year covered by the report thereupon to be filed as hereinafter provided.

Sec. 2. The valuation of iron or other ores for the purposes of determining the amount of tax to be paid under the provisions of Section 1 of this act shall be ascertained by subtracting from the value of such ore at the place where the same is brought to the surface of the earth, such value to be determined by the Minnesota tax commission:

1. The reasonable cost of separating the ore from the ore body, including the cost of hoisting, elevating, or conveying the same to the surface of the earth.

2. If the ore is taken from an open pit mine, an amount for each ton of ore mined or produced during the year equal to the cost of removing the overburden, divided by the number of tons of ore uncovered, the number of tons of ore uncovered in each case to be determined by the Minnesota Tax Commission.

3. If the ore is taken from an underground mine, an amount for each ton of ore mined or produced during the year equal to the cost of sinking and constructing shafts and running drifts, divided by the number of tons of ore that can be advantageously taken out through such shafts and drifts, the number of tons of ore that can be advantageously taken out in each such case to be determined by the Minnesota Tax Commission.

4. The amount of royalties paid on the ore mined or produced during the year.

5. A percentage of the ad valorem taxes levied for said year against the realty in which the ore is deposited equal to the percentage that the tons mined or produced during such year bears to the total tonnage in the mine.

6. The amount or amounts of all the foregoing subtractions shall be ascertained and determined by the Minnesota Tax Commission.

Sec. 3. Every person engaged in such mining or production of ores shall, on or before the first day of February, 1922, and annually thereafter on or before the first day of February of each year, file with said commission under oath a correct report in such form and containing such information as the tax commission may require, covering the preceding calendar year.

185 Sec. 4. Upon receipt by the Minnesota tax commission of such report it shall determine from such information as it may possess or obtain whether the same is correct or otherwise, and if found correct, said tax commission shall, on or before May 1, find and determine therefrom the amount of tax due from such person.

Sec. 5. Upon receipt by the Minnesota tax commission of such report it shall determine from such information as it may possess

or obtain whether the same is correct or otherwise, and if found incorrect, from such information as it may possess or obtain, it shall find and determine the amount of tax due from such person.

Sec. 6. If any person, subject to this act, shall fail to make the report provided for in section 3 hereof at the time and in the manner therein provided, the tax commission shall in such case, upon such information as it may possess or obtain, ascertain the kind and amount of ore mined or produced, together with the valuation thereof, and shall thereon find and determine the amount of the tax due from such person, and there shall be added thereto a penalty for failure to report, which penalty shall equal ten per cent of the tax imposed and shall be treated as a part thereof.

Sec. 7. Findings and determination by the Minnesota tax commission, as to the amount of taxes due under the provisions of this act, shall be in all courts, for all purposes, prima facie evidence of the facts therein stated.

Sec. 8. The Minnesota tax commission shall enter on its records the amount of taxes found and determined by it to be due from any person, as herein provided, and on or before May 1 shall certify such amount to the state auditor; who thereupon shall make his draft upon such person for the amount of taxes as thus certified, and place the same in the hands of the state treasurer for collection.

Sec. 9. In case the tax herein provided for is not paid before the first day of June of the year when due and payable, a penalty of ten per cent thereof shall immediately accrue, and thereafter one per cent per month shall be added to such tax and penalty while such tax remains unpaid.

Sec. 10. The draft of the state auditor for the tax or tax and penalties imposed by the foregoing provisions of this act shall be prima facie evidence in any court where proceedings may be brought for its enforcement that the amount therein stated is due the state from the person against whom the same is drawn.

Sec. 11. On July 1 of each year the state treasurer shall deliver to the attorney general all unpaid drafts for taxes imposed under this act, and it shall be the duty of the attorney general to bring an action thereon in the district court of Ramsey County, or of the county where such ores are mined or produced, for the amount of such draft, together with interest, penalties and costs. The judgment of the court when so obtained shall bear interest at the rate of one per cent per month and be enforceable in the manner providd by law for the enforcement of judgments obtained in civil actions.

Sec. 12. Any person who for the purpose of evading the payment of the tax hereinbefore provided, or any part thereof, makes any false return or report under Section 3 hereof, shall pay to the state a penalty of fifty per cent of the amount of said tax; and any one who shall knowingly make or sign under oath any false return of the

kind and amount of ores produced therefrom, and of the value thereof, or who shall knowingly submit any other false information required by this act, shall be deemed guilty of perjury, and upon conviction thereof shall be punished therefor as provided by law.

186 Sec. 13. All books, waybills, inventories, correspondence and memoranda relating to or used in the transaction of the business of any person owning or operating any such mine or mines, shall on demand by the Minnesota tax commission or its authorized representatives, be open to its inspection or examination. If any one having charge, control or possession of said papers and books of such person shall neglect or refuse on demand of the said tax commission or its authorized representatives access to the papers and books aforesaid, he or they shall be deemed guilty of a gross misdemeanor, and upon conviction thereof shall be punished therefor as provided by law.

Sec. 14. All taxes imposed and collected under the foregoing provisions of this act shall be paid into the state treasury and credited to the general revenue fund.

Sec. 15. Should the courts declare any section or provision of this act unconstitutional or unauthorized or in conflict with any other section or provisions of this act, then such decision shall affect only the section or provision declared to be unconstitutional or unauthorized and shall not affect any other section or part of this act.

Sec. 16. For all purposes of this act the word "person" shall be construed to include individuals, copartnerships, companies, joint stock companies, corporations, and all associations however and for whatever purpose organized.

Sec. 17. This act shall take effect and be in force from and after its passage.

187 339.

State of Minnesota.

Forty-second Session.

H. F. No. 761.

Introduced by Committee on Taxes and Tax Laws February 25, 1921.

Matter in italics is new; matter in capitals when in [] is old law to be omitted.

A Bill for an Act Proposing an Amendment to Section 1 of Article 9 of the Constitution of the State of Minnesota by Adding Thereto a New Section Imposing a Tax Upon Persons, Co-partnerships, Companies, Joint Stock Companies, Corporations, and Associations, However or for Whatever Purpose Organized, Engaged in Mining or Producing Iron Ore or Other Ores and Providing for the Distribution of Such Taxes.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. That the following amendment to section 1 of article 9 of the constitution of the state of Minnesota is hereby proposed to the people of the State of Minnesota for their approval or rejection, that is to say: Section 1 of article 9 of the constitution shall be amended by adding thereto a new section to be known as section 1A, which new section shall read as follows, to-wit:

Section 1A. Every person, co-partnership, company, joint stock company, corporation, or association however or for whatever purpose organized, engaged in the business of mining or producing iron ore or other ores in this state, shall pay to the state of Minnesota an occupational tax equal to — percent of the valuation of all ores mined or produced, which tax shall be in addition to all other taxes provided by law, said tax to be due and payable from such person, co-partnership, company, joint stock company, corporation, or association however or for whatever purpose organized, on May first of the calendar year next following the mining or producing thereof. The valuation of ore for the purpose of determining the amount of tax to be paid shall be ascertained in the manner and method now provided by law. The legislature shall by law make the necessary provisions for carrying out the purposes hereof and may by a sixty percent vote of each branch thereof, with the approval of the Governor, amend the rate of taxation herein prescribed or change the manner and method of determining the valuation of the ore mined. Funds derived from the tax herein provided for shall be apportioned: fifty percent to the State General Revenue Fund, forty percent to the Permanent School Fund and ten percent to the Permanent University Fund.

Sec. 2. Such proposed amendment shall be submitted to the people for their approval or rejection at the general election for the year 1922 and the qualified electors of the state, in their respective districts may, at such election, vote for or against such proposed amendment by ballot and the returns thereof shall be made and certified within the time, such votes canvassed, and the result thereof declared in the manner provided by law with reference to the election of state officers, and if it shall appear thereupon that a majority of all electors voting at such election shall have voted for and ratified said amendment as provided for in the next section
188 thereof, then the governor shall make proclamation thereof, and such amendment so ratified shall take effect and be in force as a part of the constitution.

Sec. 3. The ballots used at said election on said proposed amendment shall have printed thereon in bold-faced type: "For taxation of those engaged in mining iron or other ores and apportioning the proceeds thereof: fifty percent to the State Revenue Fund, forty percent to the Permanent School Fund, and ten percent to the University Fund.

Yes —.
No. —.

Each voter voting upon such proposed amendment shall place a cross mark thus (X) in a space to the left on the ballot opposite the words "Yes" and "No" according as he may wish to vote for or against said amendment, and his vote shall be counter in accordance with the express will of such elector as provided by the election laws of this state.

189 2.

PLAINTIFF'S EXHIBIT "E."

State of Minnesota.

Extra Session.

H. F. No. 23.

Introduced by Mr. Bendixen September 9, 1919.
Matter in italics is new; matter in capitals when in () is old law to be omitted.

A Bill for an Act Providing for the Levy and Collection of a Tax Upon the Value of Ores from Persons, Copartnerships, Associations, Joint Stock Companies, and Corporations Engaged in the Mining or Production Thereof.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Every person, copartnership, association, joint stock company or corporation engaged in the mining or production in this

state of iron ore or other ores shall pay to the State of Minnesota, for state purposes only, a tax which except as provided in Section 5 of this act, shall be in addition to the taxes levied and collected upon an ad valorem basis upon such mines and mining property and the appurtenances thereunto belonging, equal to five per cent of the value of all ores produced and shipped from such mine and mines; said tax shall become due and payable from such person, copartnership, association, joint stock company, or corporation on June 1st of each year for the calendar year covered by the report thereupon to be filed as hereinafter provided.

Sec. 2. The value of ore for the purposes of determining the amount of taxes to be paid under the provisions of Section 1 of this act shall be ascertained by subtracting from the prices received, or to be received, for the ore at the place of sale.

1. The cost of labor for separating the ore from the ore deposit and placing it in cars for shipment from the mine.

2. The cost of washing or drying such ore, if the same is washed or dried.

3. The cost of transporting the ore from the mine to the place of sale.

4. If taken from open pit mines an amount for each ton mined equal to the cost of removing the overburden divided by the number of tons of ore uncovered; the amount of ore uncovered to be determined by the Minnesota Tax Commission.

5. If taken from underground mines, an amount for each ton of ore mined equal to the cost of sinking and constructing shafts and running drifts to take out the ore divided by the number of tons that can be advantageously taken out through such drifts and shafts; the number of tons of ore that can be advantageously taken out in each such case to be determined by the Minnesota Tax Commission.

In all cases where ore is smelted before sale or disposed of
190 otherwise than by ordinary sale, the price of the same for the purposes of this act shall be the average market price for like kinds and grades of ore during the calendar year in which such ore was mined.

Sec. 3. Every person, copartnership, association, joint stock company or corporation engaged in such mining or production of ores shall, on or before the first day of February, 1920, and annually thereafter on or before the first day of February of each year, file with said Commission a correct report covering the preceding calendar year. Such report shall set forth:

1. The name and location of the mine or mines owned or operated by such person, copartnership, association, joint stock company or corporation.

2. The total number of tons of ore mined and the amount shipped and sold during the calendar year for which the report is made.

3. The percentage of iron, manganese, or other valuable mineral contained in the ore sold or mined.

4. The amount received for all ore sold during the calendar year covered by the report.

5. The cost per ton of mining, showing the same in detail, and the amount paid per ton for the carriage of said ore from the mouth or entrance of the mines to the place of sale, and

6. Such other and further information as the Minnesota Tax Commission may require.

Such report shall be verified by the oath of the person, or the president, secretary, superintendent or managing agent of the copartnership, association, joint stock company, or corporation making the same.

Sec. 4. Upon the receipt by the Minnesota Tax Commission of such report it shall determine from such information as it may possess or obtain, whether the same is correct or otherwise, and if found correct, said tax commission shall determine therefrom the amount of tax due from such person, copartnership, association, joint stock company, or corporation, and shall enter the amount thereof in its records and shall make its certificate of taxes due thereon from such person, copartnership, association, joint stock company, or corporation and on or before May 1st of each year and file the same with the state auditor and a duplicate thereof with the state treasurer; and the tax commission shall have power, in case it shall deem said report incorrect, to make its findings as to the amount of such taxes due after hearing upon notice to the person, co-partnership, association, joint stock company or corporation interested, and its findings shall have the same effect as the determination of the amount of such taxes upon a report made as hereinbefore provided.

Sec. 5. Before filing with the state auditor and state treasurer the certificate required by Section 4 of this act, it shall be the duty of the Minnesota Tax Commission to compute the amount of taxes assessed and levied on the ad valorem basis for the preceding calendar year on the taxable value of the ore in each producing mine and in each stockpile and to deduct from such certificate an amount equal to the taxes so assessed and levied on such ad valorem basis on the tonnage shipped from any such producing mine or from any such stockpile during the preceding calendar year. The purpose of this section is to impose a uniform tax on mined ores and to avoid collecting a double tax annually on such ores.

Sec. 6. If any such person, copartnership, association, joint stock company or corporation subject to this act shall fail to make the report provided for in section 3 of this act, at the time and in the man-

ner therein provided, there shall accrue upon the tax herein
191 imposed a penalty in an amount equal to ten per cent (10%) of the tax so imposed to be added to and collected with such tax. The tax commission shall in such case determine the kind and amount of the ores mined or produced, together with the value thereof and shall fix the tax due thereon from such persons, copartnership, association, joint stock company, or corporation, together with such penalty, upon such information as it may possess or obtain and shall proceed as provided by law when such taxes are determined upon the sworn report of the person, copartnership, association, joint stock company, or corporation owning or operating such mine or mines. Such findings shall stand in the place of the report required by this act to be made by such person, copartnership, association, joint stock company, or corporation and shall be in all courts of the state, for all purposes, prima facie evidence of the facts therein stated.

Sec. 7. In case the tax hereinbefore provided for is not paid on or before the first day of June of the year when due and payable, a penalty of ten per cent (10%) shall immediately accrue thereon.

Sec. 8. On or before the tenth day of June in each year, the state auditor shall make his draft upon each person, copartnership, association, joint stock company or corporation delinquent in the payment of such tax for the amount of taxes and penalty, or penalties, due thereon, and place the same in the hands of the state treasurer for collection.

The draft of the state auditor for the tax and penalties imposed by the foregoing provisions of this act shall be prima facie evidence in any court where proceedings may be brought for its enforcement that the amount therein stated is due the state from the person, copartnership, association, joint stock company, or corporation against whom the same is drawn.

Sec. 9. The state treasurer within ten days after the receipt of the draft mentioned in Section 8 of this act shall notify by mail the taxpayer designated therein of the amount thereof and if not paid within thirty days after presentation shall deliver the same to the attorney general whose duty it shall be to bring an action thereon in the district court of Ramsey county, or of the county where such ores are mined or produced, for the amount of such draft, together with interest and costs of the proceedings. Such tax shall draw interest at the rate of one per cent per month, commencing thirty (30) days after the same falls due. The judgment of the court when so obtained and properly docketed shall be a lien upon the interest of the taxpayers in the land from which the ores may have been mined or produced from the time the tax falls due and upon any machinery or apparatus used in connection therewith; and said lien shall continue without limitation with interest at the rate of one per cent per month, and the said property may be sold in satisfaction of such judgment in the same manner as provided by law for the sale of property upon execution.

Sec. 10. Any person, copartnership, association, joint stock company or corporation who for the purpose of evading the payment of the tax hereinbefore provided or any part thereof, makes any false return or report, or by means of any actual or pretended sale of any ore mined within the state, procures a valuation on said ore other than the value thereof as hereinbefore provided shall pay to the state a tax on such value as determined by the Minnesota Tax Commission and in addition thereto a penalty of fifty per cent (50%) of the amount of said tax; and any person, or the president, secretary, superintendent, treasurer or managing agent of any copartnership,
association, joint stock company or corporation owning or
192 operating any such mines producing ores, who shall knowingly make or sign under oath any false return of the kind and amount of ores produced therefrom, and of the value thereof, or who shall knowingly submit any other false information required by this act, shall be deemed guilty of perjury and upon conviction thereof shall be punished therefor as provided by law.

Sec. 10. All books, waybills, inventories, correspondence and memoranda relating to or used in the transaction of the business of any person, copartnership, association, joint stock company or corporation owning or operating any such mines or mine, shall on demand by the Minnesota Tax Commission or its authorized representative, be open to its inspection or examination. If any such person, or the president, superintendent, treasurer, secretary or managing agent or person having charge of said papers and books of such person, copartnership, association, joint stock company or corporation shall neglect or refuse on demand of the said tax commission or its authorized representative, access to the papers and books, aforesaid, he or they shall be deemed guilty of a misdemeanor, and upon the conviction thereof shall be punished therefor as provided by law.

Sec. 12. All taxes levied and collected under the foregoing provisions of this act shall be paid into the state treasury and credited to the general revenue fund.

Sec. 13. This act shall take effect and be in force from and after its passage.

193 PLAINTIFF'S EX. "F."

The Message of Governor J. A. A. Burnquist.

State of Minnesota,

Executive Department, Sept. 19, 1919.

Hon. W. I. Nolan, Speaker House of Representatives:

I am returning herewith without my approval House File No. 23, "A bill for an act providing for the levy and collection of a tax upon the value of ore from persons, associations, corporations and joint stock companies engaged in the mining or production thereof."

Further Deliberation Needed.

A bill similar to the one herewith returned was defeated by the house during the regular session. Now, in special session a few months later, with the same membership, the same kind of a measure is passed by a vote of 101 to 22. Such a sudden reversal of opinion on the part of so many shows the advisability of further deliberation on this important subject.

Theory is Unjust.

When a member of this body during the session of 1909 and 1911, I spent much time in studying the proposed taxing of the iron properties on a different basis from other properties, and at that time came to the conclusion that any attempt to single out
194 one section of the state or one of its industries in such a manner as is now suggested was unjust. Since that time I have found no reason for changing my opinion in this matter, but upon further study and investigation have become more firmly convinced of the justice of the position then taken.

Should be Decided on Its Merits.

An argument advanced for the passage of a law of this kind at this time is that the tonnage tax has been and is a political issue, and the enactment of the proposed law will remove this question from the field of politics. Such reasoning does not appeal to me, for the merits of the bill, and nothing else, should control. Although it is believed by some that the so-called tonnage tax issue will be eliminated by the passage of this bill, it is apparent that such an enactment will give those who are prejudiced against a certain section or industry of our state further opportunity for additional controversy with respect to the adequacy and distribution of the proposed tax at each succeeding session of the legislature.

Farm Land and Iron Land.

Farm land is today assessed at one-third of its full value. The assessed valuation of iron ore is 50 per cent higher. Although the latter is now paying the highest tax of any property in the state, it is claimed by the proponents of the proposed law that the tax should be still further increased by imposing upon iron ore an additional form of taxation. As stated by the dean of the Minnesota School of Mines, in Chapter 13 of the last report of the Minnesota tax commission,

"This class of property now contributes its share. The value
195 according to grade of tonnage contained in each of the several hundred developed ore deposits, can be easily ascertained for taxation or any other purpose of valuation. Thus as long as any of it remains in the ground, as long as it has value, present or future,

the realty containing the same contributes its taxes to the support of the state, county and local government."

The whole subject, therefore, narrows itself down to the question as to whether the iron properties should be taxed to a still greater extent and differently from other property, because as the proponent of the proposed tax says, "The body of iron ores is diminishing and nothing will eventually be left but holes in the ground."

Unsound and Illegal.

Those who live in the communities affected to the greatest extent by the removal of this property are practically unanimous against the proposed law. Some of those who live in other sections of the state and who would be the least affected by the disappearance of the ore, advocate the taxing of the Northeastern section of Minnesota on a different basis from other portions of the state. Any theory which holds that certain properties by being removed diminishes in value the land from which it is taken, therefore being taxed at a higher rate than other properties, is unsound and illogical. The fact that most of the iron ore is taken out of the state is no more of an argument for increasing the taxes thereon than the removal from the state of lumber, granite, grain or any other property would be the ground for increasing the taxes on the last named commodities. The iron ore is being converted continually into taxable subjects, such as buildings, machinery, and other instrumentalities
196 upon which taxes must be paid. It is true that all of these taxes that are imposed are not paid in Minnesota but that is no reason for taxing iron ore in a different way from that applied to other Minnesota products which are removed from the state and converted into different forms of property elsewhere.

Opposed Confiscation by Taxation.

It is also contended that the iron ore intended to be taxed by the measure now under discussion is the product of Nature and formerly property of the state of Minnesota, and for that reason should be taxed on a different basis than other property. The fact is that iron ore is not the product of Nature to any greater extent than the soil, and that the state originally owned none of this property but did acquire a small portion thereof by grant from the Federal government. If any individual or corporation has procured from the state a title to iron land illegitimately, it should resort to the courts and not to the legislature for relief. If, however, the land has been honestly acquired by the owners thereof, the state has no right to attempt to take it by legislation under the guise of taxation.

The Profit Tax Argument.

It is further claimed that the proposed bill is just because it in effect provides a tax on profit rather than a tonnage tax on a par-

ticular kind of property. If this be true, there is no reason why a profit tax should be applied to only one industry and in one section of the commonwealth and not to all sections and to all industries of the state. If this bill should be so meant as to provide for a profit tax that would be fair to all individuals, sections and
197 industries, instead of discriminating against one section and one industry, an entirely different proposition would be presented.

Courts Provide a Remedy.

It is also sought to justify this legislation on the ground that the owners of iron ore property have secured a practical monopoly of the product by unfair methods, and are obtaining unreasonable and unconscionable profits by reason thereof. If that is the situation, the remedy ought to be sought in the courts and in additional Federal and State legislation. If, as some contend, such practices are pursued by those properties to be taxed by the measure under discussion, it would be wholly wrong for the state to become a partner in such transactions by sharing in accordance with the proposed law, a profit alleged to have been made in such a manner.

Bill Violates Fundamentals.

A law of the nature suggested would violate the fundamental principles of taxation. In enacting tax legislation as well as other legislation, it should be borne in mind that inequality and lack of uniformity should be avoided. Taxation should not be used as an instrument to impose unfair and excessive burdens upon any particular class, industry or section. If revenues can be too easily secured, they usually tend to extravagances in governmental expenditures. Instead of indulging in doubtful theories to sustain different classifications of property resulting in continual litigation in our courts, we should strive to find reasons for avoiding such classifications, in order to prevent class legislation and the creating of sectional differences and class prejudices which it will require years to over-
198 come. Our greatest progress will be realized in the enactment of fair measures that tend to concord rather than to discord. Governmental encouragement of legitimate enterprises wherever they may be or wherever the owners thereof may live, is the greatest essential to the development of this commonwealth and nation and to the securing for each of its citizens of that degree of prosperity and progress for which we all hope.

Very respectfully yours,

J. A. A. BURNQUIST,
Governor.

199 That on the 24th day of May A. D. 1922, there was filed with the clerk of this Court the Decision of the Court, which is in words and figures following, to-wit:

200 In the District Court of the United States, District of Minnesota, Fifth Division.

BENNETT MINING COMPANY et al., Plaintiffs,

vs.

SAMUEL LORD et al., Defendants.

INTERSTATE IRON COMPANY et al., Plaintiffs,

vs.

SAMUEL LORD et al., Defendants.

OLIVER IRON MINING COMPANY, Plaintiff,

vs.

SAMUEL LORD et al., Defendants.

THE BIWABIK MINING COMPANY et al., Plaintiffs,

vs.

SAMUEL LORD et al., Defendants.

THE CLEVELAND-CLIFFS IRON COMPANY et al., Plaintiffs,

vs.

SAMUEL LORD et al., Defendants.

THE MESABA-CLIFFS IRON COMPANY, Plaintiffs,

vs.

SAMUEL LORD et al., Defendants.

REPUBLIC IRON & STEEL CO. et al., Plaintiffs,

vs.

SAMUEL LORD et al., Defendants.

201 *Memorandum of Opinion.*

The validity of the Act of the Legislature of this State approved April 11, 1921, is in question in these suits.

The Act is entitled:

"An Act providing for the imposition of a tax upon persons, copartnerships, companies, joint stock companies, corporations, and as-

sociations however organized, engaged in the business of mining or producing iron ore and other ores, for enforcing and collecting the same and prescribing penalties for the violation thereof."

Section 1 reads as follows:

"Section 1. Every person engaged in the business of mining or producing iron ore or other ores in this State shall pay to the state of Minnesota an occupation tax equal to 6 per cent of the valuation of all ores mined or produced, which said tax shall be in addition to all other taxes provided for by law, said tax to be due and payable from such person on May 1 of the year next succeeding the calendar year covered by the report thereupon to be filed as hereinafter provided."

Section 2 provides the method of determining the amount of tax to be paid under the provisions of Section 1.

It is, I apprehend, of greater moment to the parties that the cases shall be decided promptly, than that the court shall prepare and file an elaborate written opinion. I shall, therefore, state my conclusions in briefest outline.

Upon consideration and under the authorities I have concluded that:

The mining of iron ore by the owner of land or of the right to extract ore from land, is a business apart from and independent of the business of selling or transporting the ore so mined;

The business of mining as above limited may be rightfully made the subject of an excise, business, or occupation tax. Stratton's Independence vs. Howbert, 231 U. S., p. 415;

The tax imposed by the Act under consideration is an excise levied upon the business of mining iron ore, and not a tax levied upon either the ore or the income arising from the sale of the ore.

I do not think the method provided for determining the
202 amount of the tax can be said to be so inequitable or unfair as to render the Act obnoxious to the uniformity clause of the State Constitution, or in violation of the provision of the Fourteenth Amendment securing to all persons within the State the equal protection of its laws.

Since the extraction of iron ore is a business which may be taxed, the language of the Supreme Court in American Mfg. Co. vs. St. Louis, 250 U. S., p. 464, is controlling here. The court said:

"In our opinion, the operation and effect of the taxing ordinance are to impose a legitimate burden upon the business of carrying on the manufacture of goods in the city; it produces no direct burden on commerce in the goods manufactured, whether domestic or interstate, and only the same kind of incidental and indirect effect as that which results from the payment of property taxes or any other and general contribution to the cost of government. Therefore, it does not amount to a regulation of interstate commerce."

I am of the opinion that the Act in question is valid, and judgments will be entered accordingly.

JOHNSON,
Judge.

(Endorsed:) Decision. Filed May 24, 1922. Joel M. Dickey, Clerk, by Margaret L. Mullane, Deputy.

That on the 27th day of May A. D. 1922, there was filed in the office of the Clerk of this Court an Order for Decree, which is in words and figures following, to-wit:

203 In the District Court of the United States, District of Minnesota, Fifth Division.

BENNETT MINING COMPANY et al., Plaintiffs,
vs.
SAMUEL LORD et al., Defendants.

INTERSTATE IRON COMPANY et al., Plaintiffs,
vs.
SAMUEL LORD et al., Defendants.

OLIVER IRON MINING COMPANY, Plaintiff,
vs.
SAMUEL LORD et al., Defendants.

THE BIWABIK MINING COMPANY et al., Plaintiffs,
vs.
SAMUEL LORD et al., Defendants.

THE CLEVELAND-CLIFFS IRON COMPANY, Plaintiff,
vs.
SAMUEL LORD et al., Defendants.

THE MESABA-CLIFFS IRON COMPANY, Plaintiff,
vs.
SAMUEL LORD et al., Defendants.

REPUBLIC IRON & STEEL CO. et al., Plaintiffs,
vs.
SAMUEL LORD et al., Defendants.

Order for Decree.

204 Let decrees in each of the above entitled suits be prepared in accordance with the opinion heretofore filed, and let such decrees provide that the temporary restraining orders in said suits

heretofore issued be and remain in full force and effect for the period of sixty days after the entry of such decrees for the purpose of allowing appeals to be taken therefrom.

Dated May 27, 1922.

TILLMAN D. JOHNSON,
Judge United States District Court.

Filed May 27, 1922.
JOEL M. DICKEY,
Clerk,
By E. CATHERINE NEFF,
Deputy.

That on the same day, the 27th day of May A. D. 1922, there was filed in the office of the Clerk of this Court the Decree, which is in words and figures following, to-wit:

205 In the District Court of the United States, District of Minnesota, Fifth Division.

In Equity.

OLIVER IRON MINING COMPANY, Plaintiff,

vs.

SAMUEL LORD, JAMES G. ARMSON, and ODIN HALDEN, Constituting the Minnesota Tax Commission; Clifford L. Hilton, Attorney General of Minnesota; Raymond P. Chase, State Auditor of Minnesota, and Henry Rines, State Treasurer of Minnesota, Defendants.

Decree.

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it is ordered, adjudged and decreed that the said bill of complaint herein be and the same is hereby dismissed, with costs to the defendants to be taxed.

It is further ordered, adjudged and decreed that the temporary restraining order heretofore issued in this suit be and remain in full force and effect for the period of sixty days after the entry of this decree for the purpose of allowing an appeal to be taken therefrom.

Dated May 27, 1922.

TILLMAN D. JOHNSON,
Judge United States District Court.

Filed May 27, 1922.

JOEL M. DICKEY,
Clk.,
By MARGARET L. MULLANE,
Deputy.

206 That on the 20th day of July, A. D. 1922, there was filed in the office of the Clerk of this Court, Petition for Appeal, Order Allowing Appeal, and Plaintiff's Assignments of Errors, which are in words and figures following, to-wit:

207 In the District Court of the United States, District of Minnesota, Fifth Division.

OLIVER IRON MINING COMPANY, Plaintiff,

v.

SAMUEL LORD et al., Defendants.

Petition for Appeal.

Now comes the Oliver Iron Mining Company, plaintiff herein, feeling itself aggrieved by the final decree made and entered in the above entitled cause on the 27th day of May, A. D. 1922, by its counsel and does hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith and it prays that this appeal be allowed and that citation issue as provided by law and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United States, and your petitioner further prays that the court do order that the temporary restraining order heretofore issued in this suit be and remain in full force and effect pending the appeal herein and until the final determination of this cause.

C. A. SEVERANCE,
GEORGE W. MORGAN,
Solicitors for Plaintiff and Appellant, Oliver Iron Mining Co.

The foregoing petition is granted and the plaintiff's appeal allowed and the plaintiff having given bond as required by this court it is ordered that the temporary restraining order heretofore is-
208 sued in this suit be and remain in full force and effect pending said appeal and until the final determination of this cause.

TILLMAN D. JOHNSON,
Judge of the U. S. District Court.

Filed July 20, 1922.

JOEL M. DICKEY,
Clk.,
By E. CATHERINE NEFF,
Deputy.

209 In the District Court of the United States, District of Minnesota, Fifth Division.

OLIVER IRON MINING COMPANY, Plaintiff,

v.

SAMUEL LORD et al., Defendants.

Plaintiff's Assignments of Error.

Plaintiff in connection with its petition for appeal in the above entitled cause presents the following assignments of error upon which it will rely in said appeal. The court erred:

I.

In dismissing plaintiff's bill of complaint and entering a decree for the defendants.

II.

In holding that the business of mining iron ore is a business apart from and independent of the business of selling or transporting the ore so mined.

III.

In holding that the business of mining iron ore as shown by the record in this case may be made the subject of an excise, business or occupation tax.

IV.

In holding that the tax imposed by chapter 223, Laws of Minnesota 1921 is not a tax upon either the ore or the income arising from the sale of the ore.

V.

In holding that the tax so imposed is not obnoxious to Section 1 of Article IX of the Constitution of the State of Minnesota re-
210 quiring that the taxes shall be uniform upon the same class of subjects.

VI.

In holding that the tax so imposed is not in violation of the provisions of the 14th amendment to the Constitution of the United States securing to all persons within the State the equal protection of the laws.

VII.

In holding that the tax imposed is not a burden upon and a regulation of interstate commerce in violation of the provisions of the Constitution of the United States.

VIII.

In failing to hold that the tax so imposed if a tax upon the occupation of mining iron ore is a tax upon an occupation which is a part and incident of interstate commerce and a direct burden upon and interference with interstate commerce in violation of the provisions of the Constitution of the United States.

IX.

In failing to hold that the tax so imposed if a tax upon property is a tax upon the property which is the subject of interstate transportation and a direct burden upon and interference with interstate commerce in violation of the provisions of the Constitution of the United States.

X.

In failing to hold that by reason of the deductions allowed to persons operating mining properties under lease of royalties paid to the lessors, said act deprives operators other than said persons of the equal protection of the laws in violation of the provisions of the 14th amendment to the Constitution of the United States.

XI.

In failing to hold that by virtue of the inequalities of the
211 various deductions allowed under paragraph 2 of Section 1 of said Act to persons engaged in the mining of ore said act denies to said persons the equal protection of the laws under the provisions of the said 14th amendment.

XII.

In failing to hold that by reason of the deductions allowed to persons operating mining properties under lease of royalties paid to the lessors, said act deprives operators other than said persons of the equal protection of the laws in violation of the provisions of Section 1 of Article IX of the Constitution of the State of Minnesota, providing that taxes shall be uniform upon the same class of subjects.

XIII.

In failing to hold that by virtue of the inequalities of the various deductions allowed under paragraph 2 of Section 1 of said Act to

persons engaged in the mining of ore said act denies to said persons the equal protection of the laws in violation of the provisions of Section 1 of Article IX of the Constitution of the State of Minnesota, providing that taxes shall be uniform upon the same class of subjects.

XIV.

In failing to hold that the tax so imposed is invalid as a tax upon income under the Constitution of the State of Minnesota.

XV.

In failing to hold that as a tax upon the occupation of mining and producing ores the tax so imposed is invalid because in violation of the provisions of Section 1 of Article IX of the Constitution of the State of Minnesota.

XVI.

In failing to hold that plaintiff was entitled to the relief prayed for in the bill of complaint and to enter a decree permanently
212 enjoining the defendants from enforcing the provisions of said Act.

C. A. SEVERANCE,
GEORGE W. MORGAN,
Solicitors for Plaintiff.

Endorsed: Filed July 20, 1922. Joel M. Dickey, Clerk, by E. Catherine Neff, Deputy.

That on the 24th day of January, A. D. 1922, came the plaintiff Cleveland-Cliffs Iron Company, by its attorney, and filed in the office of the Clerk of this Court, its Bill of Complaint, which is in words and figures following, to-wit:

213 United States District Court, District of Minnesota, Fifth Division.

THE CLEVELAND-CLIFFS IRON COMPANY, Plaintiff,

vs.

SAMUEL LORD, JAMES G. ARMSON, and ODIN HALDEN, Constituting the Minnesota Tax Commission; Clifford L. Hilton, Attorney General of Minnesota; Raymond P. Chase, State Auditor of Minnesota, and Henry Rines, State Treasurer of Minnesota, Defendants.

Bill of Complaint.

To the Judges of the District Court of the United States for the District of Minnesota:

The above named plaintiff files this its Bill of Complaint against the above named defendants and alleges and shows to the Court:

1. That this plaintiff, The Cleveland-Cliffs Iron Company, is a corporation duly created, organized and existing under the laws of the State of Ohio and is a citizen of the State of Ohio and is qualified and authorized to do business in the State of Minnesota as a foreign corporation.

2. That the defendants Samuel Lord, James G. Armson and Odin Halden are the duly appointed members of and constitute the Minnesota Tax Commission, which Commission is created under the laws of the State of Minnesota; that said Odin Halden is a resident and citizen of the County of St. Louis, State of Minnesota; that said Samuel Lord is a resident and citizen of Dodge County, State of Minnesota, and said James G. Armson is a resident and citizen of Washington County, State of Minnesota; that defendant Clifford L. Hilton is the duly elected and acting Attorney General of the
214 State of Minnesota, and is a resident and citizen of the County of Ramsey in said State; that the defendant Raymond P. Chase is the duly elected and acting Auditor of the State of Minnesota and is a resident and citizen of the County of Anoka in said State and that the defendant Henry Rines is the duly elected and acting Treasurer of the State of Minnesota and is a resident and citizen of the County of Kanabec in said State.

3. That the matter in dispute in this suit exceeds, exclusive of interest and costs, the sum of value of three thousand dollars.

4. That the plaintiff is the owner and the holder, as lessee, of mining leases upon the following named and located iron mines, upon what is known as the Mesaba Range, to-wit: Wade-Helmer Mine located upon the N. E. ¼ of N. E. ¼, S. E. ¼ of N. E. ¼, N. W. ¼ of S. E. ¼ and W. ½ of N. E. ¼ of Section 14, N. W. ¼ of S. E. ¼, S. E. ¼ of S. W. ¼, N. ½ of S. W. ¼, N. E. ¼ of S. E. ¼, S. W. ¼, of S. W. ¼ of Section 12, N. ½ of N. W. ¼ and S. E. ¼ of N. W. ¼ of Section 13, in Township 58 North, Range 19 West, in St. Louis County, and the Crosby Mine, located upon the N. E. ¼ of the N. E. ¼ of Section 31 and the N. W. ¼ of N. W. ¼ of Section 32, in Township 57 North, Range 22 West, in Itasca County, Minnesota; that the plaintiff, during a portion of the year 1921, held mining leases on what is known as the Meadow-Fowler Mine located upon Lots 2, 3 and 4, S. E. ¼ of N. W. ¼ and S. W. ¼ of N. E. ¼ of Section 3 in Township 58 North, Range 15 West, in said county, but said leases were surrendered during said year; that the plaintiff was the owner and holder of said mining leases prior to the 11th day of April, 1921; that said mining leases now in force authorize and permit the plaintiff to mine, ship and remove iron ore from said mines, during the respective terms of said leases, each of which leases, except said Meadow-Fowler leases, has many years yet to run; that said Crosby Mine has been partially stripped and has been operated in the past as both an underground and milling mine but, during said year 1921, was operated as an underground mine
215 only; that said Wade-Helmer Mine is both an open pit and underground mine but was operated as an underground mine

only during the year 1921; that said Meadow-Fowler Mine is an underground mine only; that in said underground workings the ore is hoisted to the surface of the earth through shafts, while in the open pit mines, the ore before being separated from its natural deposit is first "stripped;" that said stripping work consists of removing the overburden of earth and rock from the iron ore deposits at the mine, which deposits lie in a generally horizontal position, so as to permit of the loading of the ore, by blasting and steam shovel operations, directly upon railroad cars placed upon railroad tracks in the mines; that during the year 1921 and subsequent to April 11 of that year, a certain quantity of iron ore was mined and produced from each of said mines by this plaintiff, as it had a right to do, under its said leases and under its Articles of Incorporation but this plaintiff did not, during said year 1921, mine or produce iron ore or any other ores, in the State of Minnesota, from any other properties than those above described, upon which it holds or held mining leases, as aforesaid.

216 5. That the Legislature of the State of Minnesota enacted Chapter 223 of the Laws of Minnesota, 1921, entitled "An act providing for the imposition of a tax upon persons, co-partnerships, companies, joint stock companies, corporations, and associations however organized engaged in the business of mining or producing iron ore and other ores, for enforcing and collecting the same and prescribing penalties for the violation thereof," which said act received the approval of the Governor on April 11, 1921, a copy of which act is attached to and made a part of this bill of complaint, being the last page of Exhibit "A" hereof.

6. That, as a further ground of jurisdiction, this is a suit in equity, arising under the Constitution of the United States, in that the plaintiff seeks to enjoin said defendants from acting under or in pursuance of or from in any way carrying out or enforcing the provisions of said Act of the Legislature of the State of Minnesota, being Chapter 223 of the Laws of Minnesota for 1921, upon the ground that said statute is and any and all acts done or attempted to be done thereunder by said defendants are and would be in violation of the Constitution of the United States. That the amount of taxes this plaintiff would be required to pay, under said Act, if the same is valid exceeds the sum of $3,000.00.

7. That the said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission and claiming to act in compliance with the provisions of said Act, heretofore and during the month of January, 1922, sent to this plaintiff and this plaintiff received from said Samuel Lord, James G. Armson and Odin Halden acting as the Minnesota Tax Commission, a notice calling upon the plaintiff to file with said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, under oath, a report as required by Section 3 of said Act in the form prescribed by said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, for the calendar year 1921 giving

complete information in answer to the questions enumerated
217 in said form with reference to mining operations on each of the tracts and parcels of land hereinabove described and held under lease by this plaintiff as aforesaid; that the form of notice and report prescribed by said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, received by this plaintiff is hereto attached and made a part hereof and is marked "Exhibit A."

8. That said Act, for the reasons and upon the grounds hereinafter more specifically stated, is unconstitutional and therefore the plaintiff is not required to file said report or pay the tax thereby imposed or otherwise comply with said Act; however, upon the failure of this plaintiff so to file said report on or before the 1st day of February, 1922, said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, are required by Section 6 of said Act and threaten to proceed, upon such information as they may possess or obtain, to ascertain the kind and amount of ore mined or produced by this plaintiff, together with the valuation thereof, and thereupon to find and determine the amount of the tax due or claimed to be due from this plaintiff and to add thereto a penalty for the failure of this plaintiff so to report which shall be equal to ten per cent of the tax so determined or attempted to be imposed and treated as a part thereof; that said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, are further authorized by said Act and threaten, upon the failure of this plaintiff to make such report, to demand from this plaintiff, under Section 13 of said Act, the inspection and examination of all books, waybills, inventories, correspondence and memoranda relating to or used in the transaction of plaintiff's business, and upon the failure of plaintiff to furnish the same, under the provisions of said section
of said Act, plaintiff will be guilty of a gross misdemeanor
218 and subject to punishment therefor as provided by law; that said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, are further required, under section 8 of said Act, and threaten, on or before May 1st, 1922, to certify the amount of the tax so determined and the penalty thereon to the defendant Raymond P. Chase as State Auditor; that the Legislature of the State of Minnesota, in Chapter 377 Laws of 1921, made a specific appropriation of moneys for the Minnesota Tax Commission for the maintenance, carrying out and administering of the provisions of said Act; said Raymond P. Chase, as State Auditor, is required by section 8 of said Act, and threatens to make his draft for the amount so certified and place the same in the hands of the defendant Henry Rines, as State Treasurer, for collection; that in case the tax provided for by said Act is not paid before June 1st, 1922, a penalty of ten per cent thereof and thereafter one per cent per month will be added to such tax and penalty while the same remains unpaid; that said defendant Henry Rines, as State Treasurer, is required by Section 11 of said Act and threatens to attempt to collect said draft, and upon the refusal of this plaintiff to pay the same

to deliver the same to the defendant Clifford L. Hilton as Attorney General; that said Clifford L. Hilton, as Attorney General, under the provisions of said Section 11 of said Act, is required and threatens to bring action thereon against this plaintiff in said action, for the amount of such draft, together with interest, penalties and costs; that if judgment is obtained against this plaintiff in said action, the same would, under the provisions of said Act, bear interest at the rate of one per cent per month, which said amount would be in the nature of and would in fact be a penalty upon this plaintiff; that said persons defendant will severally so act unless restrained therefrom by order of this court.

9. That this plaintiff, under and by virtue of the terms of the leases under which it holds and operates the mines hereinabove referred to, is required to pay and does pay in each year ad
219 valorem taxes upon the above described lands and iron ore deposits therein and that said lands and iron ore deposits have been assessed for ad valorem taxes for the year 1921 and at the proper time, as provided by the laws of the State of Minnesota, and the plaintiff will be required to pay said taxes.

10. That the tax imposed or attempted to be imposed by said Act is a property tax; that iron ore, whether mined or unmined, is classified as a single class for taxation purposes, under the laws of the State of Minnesota, Chapter 483, Laws 1913, (sec. 1988 G. S. 1913) and is subject to a general ad valorem property tax; that said Chapter 223, Laws of 1921, imposes a tax upon iron ore mined in a given calendar year, therefore, in the year in which any partciular iron ore is mined two taxes would be imposed upon that ore, whereas in said year ore that was still in the ground or ore that had been mined in previous years but was left in stockpile in Minnesota would be subject to but one tax; that by reason of the facts alleged, this plaintiff, who mined and removed iron ore, as hereinbefore set forth, during the calendar year 1921, is denied the equal protection of the laws, in violation of the provisions of the 14th Amendment of the Constitution of the United States, and the said Act also results in the violation of the provisions of Article IX, Section 1, of the Constitution of the State of Minnesota, providing that taxes shall be uniform upon the same class of subjects.

11. That said Chapter 223 of the laws of Minnesota of 1921, whether considered as imposing a property tax or an occupation tax, violates the provisions of the Fourteenth Amendment of the Constitution of the United States, guaranteeing that no state shall deprive any person of property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws and the provisions of Article IX of Section 1 of the Constitution of the State of Minnesota, providing that taxes shall be uniform upon the same class of subjects, in the following particulars, among
220 others:

(a) That said statute provides for the levy and assessment of a tax against this plaintiff without any opportunity on the part

of the plaintiff to have its day in court or to contest or dispute the amount of such tax to be levied, as said statute makes the levying of a tax, under said law, by the said defendants, constituting the Minnesota Tax Commission, final and conclusive, and after the tax has been so levied and drafts drawn by the defendant Auditor and by him turned over to the defendant Treasurer and by him delivered to the defendant Attorney General, requires the Attorney General to bring action on and for the amount of such draft, and there is no opportunity provided for the plaintiff to defend against the amount of the tax, and no appeal or other procedure is afforded by which this plaintiff and others similarly situated, may review the action of the said Tax Commission, in the premises.

(*b*) That said statute delegates to the said Minnesota Tax Commission arbitrary powers in determining the amount of the tax and makes the determination of the said Minnesota Tax Commission conclusive, (1) as to the value of ore, (2) as to the number of tons uncovered in each open pit mine, (3) as to the number of tons that can be advantageously taken out through each shaft or drift in an underground mine, and (4) in fact as to all the subtractions which are to be made from the value of the ore in determining the taxable value.

(*c*) That said statute further allows a deduction, under the 5th paragraph of Section 2 of said Act, of a percentage of the ad valorem taxes levied for said year against the realty in which the ore is deposited, equal to the percentage that the tons mined or produced during such year bears to the total tonnage in the mine, whereas the taxes levied against the realty in which the ore is deposited bear no necessary or proper relation to the taxes levied against the ore alone or the value thereof, since under the statutes of Minnesota the ad valorem taxes on realty include the value of the surface and buildings thereon, as well as the ore, and further because the ad
221 valorem taxes on real estate vary greatly in rates in the different localities on the Mesaba-Range, sometimes as much as two or three hundred per cent, so that this deduction is two or three times as much in one instance as in another.

(*d*) That said statute imposes a greater tax on efficient and economical operation, by allowing a greater deduction where the cost of operation is greater, and protects the improvident and wasteful operator against the provident and skilful operator, and denies to this plaintiff the equal protection of the law in conducting its operations efficiently and economically.

(*e*) That said statute imposes a greater tax on the operator who owns his property in fee and mines the same than on the operator who leases from the fee owner and pays a royalty to such owner, and therefore imposes a penalty upon a citizen and operator who attempts to operate his own property, and likewise imposes a greater tax upon the operator who holds low royalty leases, acquired many years ago, than upon an operator who holds leases upon similar property upon which higher royalties are paid.

(*f*) That said statute provides for deductions from the value of the ore at the surface of the earth of the cost of opening the mine, which deduction varies greatly according to whether the mine may have been opened many years ago, when costs were low, or whether such mine has been opened in more recent years, and particularly during war times, when costs were high.

(*g*) That the said statute further fails to make any provision in terms for deductions or computation of interest on investments made many years ago, but flatly bases said deductions upon the cost of opening up and development, regardless of when the same took place, and thereby makes the tax not uniform and equal as between operators, according to the time that they may have developed their respective properties.

222 (*h*) That the value of iorn ore varies greatly during a given year, and the said statute leaves it to the Minnesota Tax Commission arbitrarily to determine the time at which such values may be fixed.

(*i*) That the cost of separating the iron ore from the ore body varies greatly in different mines, according to the grade of ore, the character of the ore deposit, whether the same occurs in large masses, comparatively free from rock and other intrusions or has to be separated and sorted from foreign matter and other elements of like nature; that the cost of hoisting, elevating and conveying the iron ore to the surface of the earth also varies greatly with respect to different mines, depending upon the depth of the ore from the surface of the earth, the character and extent of the underground developments and other like factors, and that by reason of these facts there can be no uniform cost to be applied in arriving at the amount of the deduction provided for in subdivision 1 of Section 2 of said Act.

(*j*) That under the provisions of sub-division 2 of Section 2 of said Act, there is to be deducted from the value of the ore at the surface of the earth, for the purposes of arriving at the amount upon which the tax provided for in said Act is to be computed, in the case of open pit mines, for each ton of ore mined or produced during the year, an amount equal to the cost of removing the overburden, divided by the number of tons of ore uncovered; that the cost of removing the overburden from the ore deposits in open pit mines necessarily varies greatly with respect to different mines, as such cost depends upon the depth and character of the overburden, the accessibility of available "dumping" ground and other like considerations; further, that the number of tons of ore uncovered by removing the overburden from different mines is a variable quantity, depending upon the depth and width of the ore body uncovered, within the limits of the property owned or controlled by the
223 particular operator and experience on the Mesaba Range has shown that the depth of such ore body varies from a few feet to two or three hundred feet in thickness.

(*k*) That the provisions of sub-division 3 of Section 2 of said Act introduce another element of variation and difference in the amount of deduction therein provided for, as respects underground mines, in that the cost of sinking and constructing shafts and running drifts is different as to each underground mine, depending upon the size, depth and construction material of the shaft and the character of the earth and rock, through which the same is sunk and the number, extent and character of the drifts and the material through which the same are driven; that the number of tons of ore that it can be determined can advantageously be taken out through such shafts and drifts necessarily depends not only upon the character of the ore body, the width of the veins or deposits of ore but also upon the extent of underground workings, drilling or other known methods of exploration and development; that it is a well known fact that the development and working of the underground mines on what is known as the Vermilion Range, in the State of Minnesota, is very much more expensive than the development and working of underground mines on the Mesaba Range, owing to the fact that the iron ore deposits on the latter range are of a horizontal nature lying comparatively near the surface, while the iron ore deposits on the Vermilion Range occur in what is known as vertical veins running to great depth, some of said deposits having been worked to a depth as great as 2,000 feet, and said veins are enclosed in very hard rock, rendering the cost of sinking shafts and driving drifts very much more expensive than similar work upon the Mesaba-Range.

(*l*) Generally the operation of said Act as a whole and of Section 2 thereof, providing for the various deductions therein prescribed, will necessarily result in inequality and lack of uniformity in any tax that may be levied and assessed thereunder.

224 12. Further that the tax imposed by said Act, considered as a property tax, is a tax upon property which has become the subject of interstate transportation; that said tax is not laid upon said ore if and when mined, but is imposed upon said ore if and when the same is raised to the surface of the earth; that the process of mining and transporting iron ore in Minnesota is practically a continuous and single process, in open pit mines said ore is dug from the earth by steam shovel and placed immediately in cars of an interstate common carrier awaiting the same in the open pit of said mine and by the same is brought to the surface of the earth; that from said point the movement of said ore in cars to the point where the same are assembled into trains, from thence to the Lake Superior docks for delivery into vessels and by vessel to lower lake ports in States other than Minnesota, is practically continuous; that the process in the case of underground mines is substantially the same, save that the ore is hoisted to the surface and there immediately at the surface dumped into the cars of the interstate common carrier at the shaft house or headframe; that this process is true of all the ore shipped, save as to a comparatively small tonnage thereof, which is temporarily placed in stockpile; that all ore so mined and so transported is from the moment of its severance from the realty the sub-

ject of interstate transportation and interstate commerce, and a tax thereon is a direct interference with and burden upon interstate commerce and therefore in violation of Article 1, Section 8 of the Constitution of the United States, vesting in Congress the power to regulate commerce among the several states.

13. Further that if the tax imposed or attempted to be imposed by said Act is not a property tax but is a tax upon the business and upon the mining and producing of iron ore then it is a direct interference with and a burden upon interstate commerce and therefore in violation of Article 1, Section 8 of the Constitution of the
225 United States, vesting in Congress the power to regulate commerce among the several states; that since the commencement of the iron mining industry in Minnesota, to the present time, substantially all, i. e. upwards of 99% of the ore mined and produced in Minnesota has been sold and shipped to consumers in other states.

14. That if said Act is an Act imposing a tax upon occupations it denies to this plaintiff the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States and violates the provisions of Section 1, Article 9 of the Constitution of the State of Minnesota in that it singles out unreasonably and arbitrarily the business of mining iron ore and other ores, and imposes a tax thereon alone, discriminating against said occupation and unreasonably excluding from its operation other like occupations such as the mining and quarrying of rock, the digging of sand and gravel, ditching, grading, stone crushing, and also the business of those persons who may be and who in fact are engaged in removing overburden from open pit mines upon the Mesaba Range in Minnesota.

15. That if the tax imposed by said Act is not a property tax as hereinbefore alleged and is an occupation tax then the same is invalid for the reason that the Constitution of the State of Minnesota does not permit the imposition of any tax upon occupations as a subject of taxation.

16. That if the tax imposed by said Act is not a tax upon property as hereinbefore alleged and not a tax upon occupations, then it is a tax upon the income of persons engaged in the production of iron or other ores and does not impose a tax upon the income of any other person or class of persons or income derived from any other source, and there is no other class of income taxed in any manner under the laws of Minnesota; that the Constitution of the State of Minnesota does not permit the imposition of a tax upon in-
226 come of one person or of one class of persons or upon income from a single source to be selected by the Legislature for the purpose of taxation and does not permit the imposition of any income tax whatsoever.

17. That said Act further violates the Fourteenth Amendment of the Constitution of the United States in that it deprives all persons, including this plaintiff, engaged in mining or producing iron ore in the State of Minnesota of the equal protection of the laws and

renders their property liable to be taken without due process of law, all in violation of the Fourteenth Amendment to the Constitution of the United States, in that the penalties fixed for the failure of said persons to make reports as provided in Section 3 of said Act and for failure to open for the inspection and examination of the Minnesota Tax Commission their books, waybills, inventories, correspondence and memoranda relating to or used in connection with their ownership or operation of a mine or mines in Minnesota and for failure to pay the tax imposed or sought to be imposed by said Act are so excessive as to intimidate, coerce and compel said persons, including this plaintiff, to comply with the provisions of said Act without the freedom of resorting to the courts to test the validity of the provisions of said Act.

18. That no provision is made in said Act for the refundment of any money paid as taxes pursuant to its provisions if it be finally found and determined that said Act is in fact unconstitutional and void, and there is no provision in the Statutes of Minnesota giving to this plaintiff or anyone the right or power to compel the State of Minnesota to refund money paid as taxes pursuant to said Act; the only way open to this plaintiff in a court of law to test the constitutionality or validity of said Act is to refuse to comply with said Act and to refuse to pay the taxes which said Act purports to impose and thereby expose itself to the danger of being liable for the excessive penalties provided in said
227 Act, therefore this plaintiff has no plain, adequate and complete remedy at law.

19. That if for the purpose of testing the constitutionality and validity of said Act, this plaintiff refuses and declines to make such report on or before February 1st, 1922, or to pay said tax or otherwise to comply with said Act, it and its officers and agents may be and as this plaintiff verily believes will be subjected to many suits brought by or on behalf of the State of Minnesota, that the defendants constituting the Minnesota Tax Commission have, as hereinbefore alleged, required from this plaintiff separate reports from each mine operated, and if said defendants proceed to determine a tax with reference to each mine (except where the operation of such mine was conducted at a loss or so that no taxable value is arrived at under said Act) and cause a draft to be drawn for the taxes so determined against each such mine, and said defendant Hilton, as Attorney General, brings suit on each of said drafts, there will result a multiplicity of suits against this plaintiff; a criminal action may be brought against this plaintiff's officers and agents as aforesaid by reason of failure to open for inspection and examination to the Minnesota Tax Commission its books, waybills, inventories, correspondence and memoranda as provided in Section 3 of said Act, and actions may be brought against this plaintiff, in case it fails to pay the tax aforesaid for the year 1921 and for the succeeding years, for the collection of said tax as provided in said Act. Therefore, this plaintiff, itself and its officers and agents, will be subjected to a multiplicity of suits.

20. That if the plaintiff is not granted immediate relief by this court of equity, defendants Lord, Armson and Halden, acting as the Minnesota Tax Commission, threaten to and will, as this plaintiff believes, require or attempt to require shortly after February 1, 1922, this plaintiff to open to said defendants for examination
228 and inspection its books, waybills, inventories, correspondence and memoranda as provided in Section 13 of said Act, and if this plaintiff's agents or officers having control of such papers and books shall neglect and refuse, on demand of said defendants acting as Minnesota Tax Commission, to permit such examination and inspection, they will be guilty of a gross misdemeanor and punishable therefor; further, if, for the purpose of testing the constitutionality and validity of said Act, this plaintiff refuses to render the report required in Section 3 of said Act by February 1st, 1922, a penalty of ten per cent of the tax computed by the Minnesota Tax Commission will, under the provisions of Section 6 of said Act, be added to the tax, therefore this plaintiff is threatened with immediate and irreparable injury.

21. That by reason of all of the foregoing facts set forth in this bill of complaint this plaintiff is threatened with immediate and irreparable injury and a multiplicity of actions if this court of equity does not grant the relief herein prayed, and has and can have no plain, adequate and complete remedy at law.

Wherefore, this plaintiff prays this Honorable Court for a judgment and decree against the defendants and each of them as follows:

1. To grant to it and against the defendants and each of them, individually or in their representative capacities as officers of the State of Minnesota, a temporary restraining order to be replaced by an interlocutory injunction to be granted by an enlarged court of three judges, pursuant to Section 266 of the Judicial Code of the United States, and that upon a final hearing, to be succeeded in turn by a permanent injunction restraining, enjoining and prohibiting said defendants, either as individuals or as representatives of the State of Minnesota, from acting under or in pursuance of or from in any way carrying out or enforcing the provisions of the Act of the Legislature of the State of Minnesota, being Chapter 223 of the Laws of Minnesota for 1921 and entitled "An Act providing for
229 the imposition of a tax upon persons, copartnerships, companies, joint stock companies, corporations and associations however organized, engaged in the business of mining or producing iron ore and other ores, for enforcing and collecting the same, and prescribing penalties for the violation thereof."

2. To grant to this plaintiff such other and further relief as this Honorable Court shall deem just and equitable.

H. J. GRANNIS,
Solicitor for Plaintiff.

407-8 First Nat'l Bnk. Bldg., Duluth, Minnesota.

WILLIAM P. BELDEN, *Of Counsel.*

230-236 STATE OF MINNESOTA,
County of St. Louis, ss:

Max H. Barber, being first duly sworn, on oath, says that he is and during all of the year 1921 was District Superintendent of The Cleveland-Cliffs Iron Company, the above named plaintiff, and as such has charge of its mining operations and business in the State of Minnesota; that he had read the foregoing Bill of Complaint and knows the contents thereof and that the same is true of his own knowledge, except as to matters therein stated on information and belief and as to those matters he believes it to be true.

MAX H. BARBER.

Subscribed and Sworn to before me, this 23rd day of January, 1922.

[SEAL.] H. J. GRANNIS,
Notary Public, St. Louis County, Minnesota.

My Commission expires October 8, 1925.

* * * * * * *

237 Endorsed: Filed January 24, 1922. Joel M. Dickey, Clerk, by E. Catherine Neff, Deputy.

That on the 20th day of February A. D., 1922, there was filed in the office of the Clerk of said Court answer of defendants to the bill of complaint of Cleveland-Cliffs Iron Co., in words and figures following, to-wit:

238 United States District Court, District of Minnesota, Fifth Division.

In Equity.

THE CLEVELAND-CLIFFS IRON COMPANY, Plaintiff,

vs.

SAMUEL LORD, JAMES G. ARMSON, and ODIN HALDEN, Constituting the Minnesota Tax Commission; Clifford L. Hilton, Attorney General of Minnesota; Raymond P. Chase, State Auditor of Minnesota, and Henry Rines, State Treasurer of Minnesota, Defendants.

Answer to Bill of Complaint.

The above named defendants for their joint and several answers to the bill of complaint of the plaintiff in the above entitled cause, respectfully represent and state to the court as follows:

I.

The defendants admit the allegations of Paragraph 1, of said bill of complaint.

II.

Defendants admit the allegations of Paragraph 2 of said bill of complaint, except as to the residence of Attorney General Clifford L. Hilton, which the defendants allege to be in Otter Tail County, Minnesota.

III.

Defendants admit the allegations of Paragraph 3 of said bill of complaint.

IV.

Defendants admit the allegations of Paragraph 4 of said
239 bill of complaint, except that they deny that plaintiff's open pit mines have therein railroad tracks and cars operated by common carriers. On the contrary, they allege that the railroad tracks in such open pit mines are owned by the plaintiff and the cars on such tracks are operated, not by common carriers, but by the plaintiff's own employes.

V.

Defendants admit the allegations of Paragraph 5 of said bill of complaint.

VI.

Defendants admit that plaintiff in this suit seeks to enjoin said defendants from enforcing the provisions of a certain act of the legislature of the state of Minnesota, being chapter 223, of the Laws of Minnesota for the year 1921, upon the ground of its unconstitutionality.

Defendants admit that the taxes which plaintiff would be required to pay for the year 1921 under said act exceed the sum of $3,000.00 and that the matter in dispute exceeds, exclusive of interest and costs, the sum of $3,000.00.

Defendants expressly deny that this is a suit properly brought in equity and expressly deny that any sufficient ground for equitable relief is stated or exists, and defendants deny that said act is in violation of any provision of the Constitution of the United States or of the state of Minnesota.

VII.

Defendants admit the allegations of Paragraph 7 of said bill of complaint.

VIII.

Defendants deny that said act, to-wit: chapter 223, Laws of Minnesota 1921, is unconstitutional upon any of the grounds set forth in Paragraph 8 of said bill of complaint. Defendants admit
240 that unless restrained they will enforce said law.

IX.

Defendants admit the allegations of Paragraph 9 of said bill of complaint.

X.

Defendants deny all of the allegations of Paragraph 10, of the bill of complaint, except they admit that an ad valorem tax is imposed by the laws (chap. 483, Laws 1913) of the state upon iron mines.

XI.

Defendants deny that said law violates the provisions of the Fourteenth amendment to the Constitution of the United States or the provisions of section 1, article 9, of the Constitution of the state of Minnesota, in any of the particulars set forth in said paragraph 11, and in respect to each subdivision of said paragraph defendants allege as follows:

(*a*) They allege that the tax assessed under the terms of said law may be collected, only, in an ordinary civil action for the recovery of money, in which action the person assessed may contest the right of the state to assess such tax and the amount thereof and he may assert without restriction any defense which he may have in respect to such tax or any part thereof. Upon the trial of such suit there will be no conclusive presumption of any kind and the findings and decisions of the tax commission and the drafts of the auditor furnish only prima facie evidence of the validity of the assessment and of the correctness of the amount of the tax.

(*b*) Defendants deny that legislative power is delegated to the Minnesota Tax Commission by said law or that the determi-
241 nations or findings of that commission are conclusive as to any of the matters set forth in subdivision (*b*) of paragraph 11 of said bill of complaint.

(*c*) Defendants allege on information and belief that each of the leases under which plaintiffs, respectively, carry on their mining business requires the lessee to pay all taxes assessed against the property so leased, and they further allege that said law, in authorizing persons engaged in the mining business to deduct from the valuation of each ton of ore mined each ton's proportion of ad valorem taxes paid by them, tends to equalize the burden of the tax provided for in said law, particularly in respect to adjusting the same as between open pit and underground mines. That mining or producing ore from an underground mine is widely different from mining or producing ore from an open pit mine. The ore in underground mines lies at a considerable depth below the surface of the earth; shafts are sunk to the ore bodies; tunnels or drifts are driven at different levels into the ore bodies and the ore thus reached is separated and brought to the mouth of the shaft by manual labor. The amount of ore

which may be extracted from an underground mine in a given time is restricted by the limitations of space and openings thus imposed. The ore in open pit mines lies near the surface of the earth; the over burden of the ore is stripped off the ore bodies and thereafter the operation is simply one of separating the ore by means of steam shovels and loading it into cars brought into the pit of the mines as hereinafter described. The cost of producing a ton of ore from an underground mine greatly exceeds the cost of procuring a ton of ore of like quality from an open pit mine.

(*d*) Defendants deny that said law imposes any different tax on efficient operators than upon inefficient op-ators, or that it
242 protects the wasteful or improvident operator; they deny that mine operators will be either more or less efficient or wasteful on account of the imposition of such tax; on the contrary they allege that each person or corporation will mine his ore as economically as possible. They allege that said law operates, in this respect, to equalize, as far as possible, the tax on this occupation or business, so far as the special circumstances and conditions surrounding the persons, firms or corporations engaged in such occupation may be practically foreseeable.

(*e*) Defendants deny that said law imposes a greater tax on the operator who owns his own property than on one who leases his property and pays a royalty to the owner, or that it imposes a greater tax upon the operator who pays a lower royalty than another. They admit that such royalties as are actually paid according to the circumstances of the different operators and the condition of their respective properties are deductible. But they allege that if the law failed to permit such deductions, it would bear unequally upon the different persons engaged in the occupation or business of mining, particularly since the royalties to be paid will vary in respect to the value of the ore in its natural bed and its value therein will be greatly affected by the kind of a mining operation necessary to extract it, since a higher royalty will be paid for the right to mine ore of a given quality if it can be mined by open pit methods than would be paid if it could only be mined by underground mining methods.

(*f*) Defendants admit the allegations of subdivision (*f*) of paragraph 11 of the bill of complaint. Furthermore, they allege that the cost of opening one mine may and will vary from the cost of opening another mine, regardless of the period in which any such mine may be opened. They allege that the law does not lack uni-
243 formity of operation because of such differences in the circumstances of those engaged in the occupation of mining, or that on that account uniformity would have been promoted by refusing to permit any deduction for such cost or in permitting an arbitrary deduction, without reference to the actual cost of opening the mine.

(*g*) Defendants admit that said law fails to permit deductions on account of interest on investments, as alleged in subdivision (*g*) of paragraph 11 of the bill of complaint. They allege that it was

not the intent or purpose of the legislature to permit miners to deduct all of the costs of carrying on their business, but that it was the intention of the legislature to permit such deductions as in a practical and substantial way tended to equalize the burden of their occupation tax by allowing such deductions as would equalize the difference between open pit mining operations and underground mining operations as aforesaid. They further allege that the amount of interest upon such investments, when apportioned to each ton of ore mined, would be infinitesimal and would have an insignificant effect upon the amount of taxes to be collected under said law.

(*h*) Defendants admit that the value of ore may vary during a given year, but they deny that the tax commission is given any arbitrary power or authority to determine the time for which such values may be reckoned.

(*i*) Defendants admit the allegations of subdivision (*i*) of paragraph 11 of the bill of complaint.

(*j*) Defendants admit the allegations of subdivision (*j*) of paragraph 11 of the bill of complaint.

(*k*) Defendants admit the allegations of subdivision (*k*) of paragraph 11 of the bill of complaint.

(*l*) Defendants deny the allegations of subdivision (*l*) of
244 paragraph 11 of the bill of complaint.

XII.

Defendants repeat their denial that said law imposes a property tax. They deny that the process of mining and transporting ore is a continuous process and deny that plaintiff's iron ore is mined and transported as set forth in paragraph 12 of the bill of complaint. They allege that, except as to "wash ore" or so-called "low grade ore," the manner and method of delivering the same for transportation, and for transporting same is as follows:

The plaintiff has constructed and owns railway tracks running through and upon its open pit mines; that said plaintiff owns railway engines operated by its own employes; that the carrier operating the lines over which plaintiff's ore is to be shipped from said open pit mines, when called upon to do so by plaintiff, sets out on its side tracks for use of plaintiff such empty cars as plaintiff may require; that thereupon plaintiff, with its engines and through its employes, goes upon the sidings of such carrier and takes such empty cars into and upon such open pit mines, loads such cars with ore, and thereafter delivers them at such railway side tracks to such carrier with directions as to their movement and destination.

That ore from underground mines is brought to the surface, through shafts, in "skips," so-called, to the shaft house. During a part of the year the ore is deposited in pockets at the shaft house

for loading into railway cars. During the remainder of the year the ore is carried from the shaft house to a stock pile, there to await the later loading into cars. That nearly 50% of the ore mined is so deposited in stock piles. The shaft house is reached by side tracks owned by carriers, which tracks lie directly beneath the pockets.

Plaintiff calls upon the carrier to furnish such cars as it may
245 require and these cars are set out upon such side tracks and plaintiff's employes move such cars, usually one or two at a time, beneath the ore pockets, load such cars, assemble them when loaded, and notify carrier of their readiness for movement, and the carrier then takes such shipment to destination. Ore in stock pile is loaded by plaintiff by steam shovels into cars similarly assigned by the carrier, and moved, assembled, and delivered by plaintiff in substantially the same manner as are cars loaded from pockets.

That "wash ore," so-called is taken from the mine, whether the same be an open pit mine or an underground mine, by plaintiff through its employes, and upon its own cars drawn by its own locomotives, and is carried and transported over its own railway tracks to a washing plant or concentrating plant, distant from one to five miles from such mines; it is there beneficiated by plaintiff, that is, washed free of sand and other foreign substances, and thereafter such beneficiated ore, commonly called concentrates, is shipped by plaintiff to furnaces in its usual course of business.

Defendants deny that ore is the subject of interstate transportation from the time of its severance from the realty and deny that the tax imposed upon plaintiff interferes with or burdens commerce in violation of article 1, section 8, of the Constitution of the United States, as alleged in paragraph 12 of the bill of complaint.

XIII.

Defendants deny that such tax is a direct interference with or a burden upon interstate commerce. Defendants, although having no knowledge of the exact amount, admit that a very large
246 percentage of the iron ore mined in Minnesota, after being mined, is, and for some time to come may be, shipped via the Great Lakes to so-called lower lake ports and there sold or delivered to furnace consumers.

Further answering the allegations of paragraph 13, of the bill of complaint, the defendants reassert the allegations set forth in paragraph 12 of this answer, which allegations relate to the manner of mining iron ore and the delivery thereof to the initial common carrier for transportation. Defendants state that they have no knowledge but believe to be true the allegations in paragraph 13 of the bill of complaint relating to contracts covering the sale and delivery of the estimated output of each of plaintiff's mines in Minnesota.

XIV.

Defendants deny that the legislative act in question, by singling out the business of mining ore, makes an illegal classification in vio-

lation of the Fourteenth Amendment to the Constitution of the United States or of section 1, article 9, of the state Constitution, and defendants allege that there is in Minnesota no other occupation or business similar to or like the business of mining or producing iron ore or other ores.

XV.

Defendants deny the allegations of paragraph 15 of the bill of complaint.

XVI.

Defendants deny that the tax imposed by the act in question is an income tax and, on the contrary, they allege that it is the purpose and effect of said statute to impose a business or occupation tax upon plaintiff based upon the amount of ore produced, which tax is equalized and made uniform by basing the tax upon the value of the ore produced and by allowing certain deductions
247 therefrom, which deductions are principally designed to equalize the tax upon underground mining and the tax upon open pit mining. That mining or producing ore from an underground mine is widely different from mining or producing ore from an open pit mine. The ore in underground mines lies at a considerable depth below the surface of the earth; shafts are sunk to the ore bodies; tunnels or drifts are driven at different levels into the ore bodies and the ore thus reached is separated and brought to the mouth of the shaft by manual labor. The amount of ore which may be extracted from an underground mine in a given time is restricted by the limitations, space and openings thus imposed. The ore in open pit mines lies near the surface of the earth; the over burden of the ore is stripped off the ore bodies and thereafter the operation is simply one of separating the ore by means of steam shovels and loading it into cars brought into the pit of the mines as hereinbefore described. The cost of producing a ton of ore from an uderground mine greatly exceeds the cost of producing a ton of ore of like quality from an open pit mine.

XVII.

Defendants deny that said act violates the "equal protection" or "due process of law" provisions of the Fourteenth Amendment to the Constitution of the United States and defendants deny that the penalties (prescribed by said act) are excessive or are such as to intimidate or coerce plaintiff as alleged in paragraph 17 of the bill of complaint.

XVIII.

Defendants deny that the plaintiff has no plain, adequate and complete remedy at law because of the penalties provided for in said act, and in that connection defendants allege that the pre-

scribed penalities are not more severe than are ordinarily
248 and usually provided for in taxation laws.

XIX.

Defendants deny that if plaintiff, for the purpose of testing the constitutionality and validity of said act, refuses and neglects to comply with the requirements thereof, it and its officers and agents may be, or will be, subjected to many suits brought by or on behalf of the state of Minnesota. Defendants admit that the Minnesota Tax Commission has requested this plaintiff as to each property being mined by it to file the report required by section 3 of said act. Defendant Hilton as attorney general denies that he intends or proposes to bring separate actions against plaintiff on account of each of its mines, and alleges that said chapter 223, Laws 1921, contemplates but a single action against plaintiff if it shall fail to pay taxes assessed against it thereunder, and defendant Attorney General Hilton alleges that he will commence and prosecute against plaintiff only the single suit provided for in said act.

XX.

Defendants admit the allegations of paragraph 20 of the bill of complaint, except they expressly deny that the plaintiff is threatened with immediate and irreparable injury.

XXI.

Defendants deny that the plaintiff is threatened with immediate and irreparable injury and a multiplicity of suits. They deny that the plaintiff has no plain, adequate and complete remedy at law as alleged in paragraph 21 of the bill of complaint.

Having thus made a full answer to all the matters and things contained in the bill, the defendants pray that the bill be dis-
249 missed and for judgment for their costs in this behalf incurred.

CLIFFORD L. HILTON,
Attorney General;
EGBERT S. OAKLEY,
Deputy Attorney General;
MONTREVILLE J. BROUN,
Assistant Attorney General,
Solicitors for Defendants.

102 State Capitol, St. Paul, Minnesota.

250 STATE OF MINNESOTA,
County of Ramsey, ss:

Samuel Lord, being first duly sworn, says that he is one of the defendants named in the bill of complaint herein; that he has read

the foregoing answer and knows the contents thereof and that the same is true of his own knowledge, except as to matters therein stated upon information and belief, and as to those matters he believes it to be true.

SAMUEL LORD.

Subscribed and sworn to before me February 18, 1922.
[SEAL.] (G. K. SPANGENBERG,)
Notary Public, Ramsey County, Minnesota.

My commission expires Mar. 11, 1922.

Endorsed: Filed February 20, 1922. Joel M. Dickey, Clerk, by J. C. Herman Engel, Deputy.

That on the 24th day of January, A. D. 1922, came the plaintiff Mesaba-Cliffs Iron Mining Company, by its attorney, and filed in the office of the Clerk of this Court, its Bill of Complaint, which is in words and figures following, to-wit:

251 United States District Court, District of Minnesota, Fifth Division.

THE MESABA-CLIFFS IRON MINING COMPANY, Plaintiff,

vs.

SAMUEL LORD, JAMES G. ARMSON, and ODIN HALDEN, Constituting the Minnesota Tax Commission; Clifford L. Hilton, Attorney General of Minnesota; Raymond P. Chase, State Auditor of Minnesota, and Henry Rines, State Treasurer of Minnesota, Defendants.

Bill of Complaint.

To the judges of the District Court of the United States for the District of Minnesota:

The above named plaintiff files this its Bill of Complaint against the above named defendants and alleges and shows to the Court:

1. That this plaintiff, The Mesaba-Cliffs Iron Mining Company, is a corporation duly created, organized and existing under the laws of the State of Ohio and is a citizen of the State of Ohio and is qualified and authorized to do business in the State of Minnesota as a foreign corporation.

2. That the defendants Samuel Lord, James G. Armson, and Odin Halden are the duly appointed members of and constitute the Minnesota Tax Commission, which Commission is created under the laws of the State of Minnesota; that said Odin Halden is a resident and citizen of the County of St. Louis, State of Minnesota; that said Samuel Lord is a resident and citizen of Dodge County, State of Minnesota, and said James G. Armson is a resident and citizen of

Washington County, State of Minnesota; that defendant Clifford L. Hilton is the duly elected and acting Attorney General of the
252 State of Minnesota, and is a resident and citizen of the County of Ramsey in said State; that the defendant Raymond P. Chase is the duly elected and acting Auditor of the State of Minnesota and is a resident and citizen of the County of Anoka in said State and that the defendant Henry Rines is the duly elected and acting Treasurer of the State of Minnesota and is a resident and citizen of the County of Kanabec in said State.

3. That the matter in dispute in this suit exceeds, exclusive of interest and costs, the sum or value of three thousand dollars.

4. That this plaintiff is the owner and holder, as lessee, of mining leases upon, among others, the following named and located iron mines, upon what is known as the Mesaba-Range, to-wit: The Boeing, at the Village of Hibbing, St. Louis County, Minnesota, and the Hill-Trumbull, at the Village of Marble, in Itasca County, Minnesota; that said Boeing Mine is located upon the S. W. ¼ of S. E. ¼ and S. E.¼ of S. W. ¼ of Section 6 in Township 57 North, Range 20 West, in said County of St. Louis and said Hill-Trumbull Mine is located upon the N. E. ¼, S. E. ¼ of N. W. ¼ and N. ½ of S. W. ¼ of Section 17, and N. E. ¼ of S. E. ¼ of Section 18, in Township 56 North, Range 23 West, in said County of Itasca; that the plaintiff was the owner and holder of said mining leases prior to the eleventh day of April, 1921; that said mining leases authorize and permit the plaintiff to mine, ship and remove iron ore from said mines, during the respective terms of said leases, each of which lease has many years yet to run; that said mines are what is known as open pit or stripping mines, though said Boeing Mine is also equipped with a working shaft through which ore mined under the ground, by means of drifts and raises, is hoisted to the surface; that all ore heretofore mined and removed from said Boeing Mine has been hoisted through said shaft, but said mine is now being stripped
253 that the said Hill-Trumbull mine is an open pit or stripping mine and the over burden is only partially removed and stripping work is still in progress at said mine; that said stripping work consists of removing the over burden of earth and rock from the iron ore deposits at said mines, lying in a generally horizontal position, so as to permit the loading of the ore, by blasting and steam shovel operations, directly upon railroad cars placed upon railroad tracks in the mines; that during the year 1921 and subsequent to April 11 of that year, a certain quantity of iron ore was mined and produced from each of said mines by this plaintiff, as it had a right to do, under its said leases and under its Articles of Incorporation but this plaintiff did not, during said year 1921, mine or produce iron ore or any other ores, in the State of Minnesota, from any other properties than those above described, upon which it holds mining leases, as aforesaid.

4*a*. That the aforesaid stripping work at said mines, during said year 1921, was conducted by certain other corporations, under con-

tracts made with this plaintiff; that such stripping work is a necessary part of mining iron ore by the open pit method; that said stripping work at said Hill-Trumbull Mine was carried on in 1921, coincident with the loading of iron ore in other parts of the mine; that stripping work at said Boeing Mine has not yet reached a point of development to permit of the loading of iron ore in the open pit.

254 5. That the Legislature of the State of Minnesota enacted Chapter 223 of the Laws of Minnesota, 1921, entitled "An act providing for the imposition of a tax upon persons, co-partnerships, companies, joint stock companies, corporations, and associations however organized engaged in the business of mining or producing iron ore and other ores, for enforcing and collecting the same and prescribing penalties for the violation thereof," which said act received the approval of the Governor on April 11, 1921, a copy of which act is attached to and made a part of this bill of complaint, being the last page of Exhibit "A" hereof.

6. That this is a suit in equity, arising under the Constitution of the United States, in that the plaintiff seeks to enjoin said defendants from acting under or in pursuance of or from in any way carrying out or enforcing the provisions of said Act of the Legislature of the State of Minnesota, being Chapter 223 of the Laws of Minnesota for 1921, upon the ground that said statute is and any and all acts done or attempted to be done thereunder by said defendants are and would be in violation of the Constitution of the United States. That the amount of taxes this plaintiff would be required to pay, under said Act, if the same is valid exceeds the sum of $3,000.00.

7. That the said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission and claiming to act in compliance with the provisions of said Act, heretofore and during the month of January, 1922, sent to this plaintiff and this plaintiff received from said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, a notice calling upon this plaintiff to file with said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, under oath, a report as required by Section 3 of said Act in the form prescribed by said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, for the calendar year 1921 giving complete information in answer to the questions enumerated
255 in said form with reference to mining operations on each of the tracts and parcels of land hereinabove described and held under lease by this plaintiff as aforesaid; that the form of notice and report prescribed by said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, received by this plaintiff is hereto attached and made a part hereof and is marked "Exhibit A."

8. That said Act, for the reasons and upon the grounds hereinafter more specifically stated, is unconstitutional and therefore this plaintiff is not required to file said report or pay the tax thereby

imposed or otherwise comply with said Act; however, upon the failure of this plaintiff so to file said report on or before the 1st day of February, 1922, said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, are required by Section 6 of said Act and threaten to proceed, upon such information as they may possess or obtain, to ascertain the kind and amount of ore mined or produced by this plaintiff, together with the valuation thereof, and thereupon to find and determine the amount of the tax due or claimed to be due from this plaintiff and to add thereto a penalty for the failure of this plaintiff so to report which shall be equal to ten per cent of the tax so determined or attempted to be imposed and treated as a part thereof; that said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, are further authorized by said Act and threaten, upon the failure of this plaintiff to make such report, to demand from this plaintiff, under Section 13 of said Act, the inspection and examination of all books, waybills, inventories, correspondence and memoranda relating to or used in the transaction of plaintiff's business, and upon the failure of plaintiff to furnish the same, under the provisions of said section of said Act, plaintiff will be guilty of a gross misdemeanor and subject to
256 punishment therefor as provided by law; that said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, are further required, under section 8 of said Act, and threaten, on or before May 1st, 1922, to certify the amount of the tax so determined and the penalty thereon to the defendant Raymond P. Chase as State Auditor; that the Legislature of the State of Minnesota, in Chapter 337 Laws of 1921, made a specific appropriation of moneys for the Minnesota Tax Commission for the maintenance, carrying out and administering of the provisions of said Act; said Raymond P. Chase, as State Auditor, is required by section 8 of said Act, and threatens to make his draft for the amount so certified and place the same in the hands of the defendant Henry Rines, as State Treasurer, for collection; that in case the tax provided for by said Act is not paid before June 1st, 1922, a penalty of ten per cent thereof and thereafter one per cent per month will be added to such tax and penalty while the same remains unpaid; that said defendant Henry Rines, as State Treasurer, is required by Section 11 of said Act and threatens to attempt to collect said draft, and upon the refusal of this plaintiff to pay the same to deliver the same to the defendant Clifford L. Hilton as Attorney General; that said Clifford L. Hilton, as Attorney General, under the provisions of said Section 11 of said Act, is required and threatens to bring thereon against this plaintiff for the amount of such draft, together with interest, penalties and costs; that if judgment is obtained against this plaintiff in said action, the same would, under the provisions of said Act, bear interest at the rate of one per cent per month, which said amount would be in the nature of and would be in fact be a penalty upon this plaintiff; that said persons defendant will severally so act unless restrained therefrom by order of this court.

9. That this plaintiff, under and by virtue of the terms of the leases under which it holds and operates the mines hereinabove referred to, is required to pay and does pay in each year ad
257 valorem taxes upon the above described lands and iron ore deposits therein and that said lands and iron ore deposits have been assessed for ad valorem taxes for the year 1921 and at the proper time, as provided by the laws of the State of Minnesota, and the plaintiff will be required to pay said taxes.

10. That the tax imposed or attempted to be imposed by said Act is a property tax; that iron ore, whether mined or unmined, is classified as a single class for taxation purposes, under the laws of the State of Minnesota, Chapter 483, Laws 1913, (sec. 1988 G. S. 1913) and is subject to a general ad valorem property tax; that said Chapter 223, Laws of 1921, imposes a tax upon iron ore mined in a given calendar year, therefore, in the year in which any particular iron ore is mined two taxes would be imposed upon that ore, whereas in said year ore that was still in the ground or ore that had been mined in previous years but was left in stockpile in Minnesota would be subject to but one tax; that by reason of the facts alleged, this plaintiff, who mined and removed iron ore, as hereinbefore set forth, during the *cla*endar year 1921, is denied the equal protection of the laws, in violation of the provisions of the 14th Amendment of the Constitution of the United States, and the said Act also results in the violation of the provisions of Article IX, Section 1, of the Constitution of the State of Minnesota, providing that taxes shall be uniform upon the same class of subjects.

11. That said Chapter 223 of the laws of Minnesota of 1921, whether considered as imposing a property tax or an occupation tax, violates the provisions of the Fourteenth Amendment of the Constitution of the United States, guaranteeing that no state shall deprive any person of property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws and the provisions of Article IX of Section 1 of the Constitution of the State of Minnesota, providing that taxes shall be uniform upon the same class of subjects, in the following par-
258 ticulars, among others:

(*a*) That said statute provides for the levy and assessment of a tax against this plaintiff without any opportunity on the part of the plaintiff to have its day in court or to contest or dispute the amount of such tax to be levied, as said statute makes the levying of a tax, under said law, by the said defendants, constituting the Minnesota Tax Commission, final and conclusive, and after the tax has been so levied and drafts drawn by the defendant Auditor and by him turned over to the defendant Treasurer and by him delivered to the defendant Attorney General, requires the Attorney General to bring action on and for the amount of such draft, and there is no opportunity provided for the plaintiff to defend against the amount of the tax, and no appeal or other procedure is afforded

by which this plaintiff and others similarly situated, may review the action of the said Tax Commission, in the premises.

(*b*) That said statute delegates to the said Minnesota Tax Commission arbitrary powers in determining the amount of the tax and makes the determination of the said Minnesota Tax Commission conclusive, (1) as to the value of ore, (2) as to the number of tons uncovered in each open pit mine, (3) as to the number of tons that can be advantageously taken out through each shaft or drift in an underground mine, and (4) in fact as to all the subtractions which are to be made from the value of the ore in determining the taxable value.

(*c*) That said statute further allows a deduction, under the 5th paragraph of Section 2 of said Act, of a percentage of the ad valorem taxes levied for said year against the realty in which the ore is deposited, equal to the percentage that the tons mined or produced during such year bears to the total tonnage in the mine, whereas the taxes levied against the realty in which the ore is deposited bear no necessary or proper relation to the taxes levied against the ore alone or the value thereof, since under the statutes of Minnesota the ad valorem taxes on realty include the value of the surface and buildings thereon, as well as the ore, and *and* further be-
259 cause the ad valorem taxes on real estate vary greatly in rates in the different localities on the Mesaba-Range, sometimes as much as two or three hundred per cent, so that this deduction is two or three times as much in one instance as in another.

(*d*) That said statute imposes a greater tax on efficient and economical operation, by allowing a greater deduction where the cost of operation is greater, and protects the improvident and wasteful operator against the provident and skilful operator, and denies to this plaintiff the equal protection of the law in conducting its operations efficiently and economically.

(*e*) That said statute imposes a greater tax on the operator who owns his property in fee and mines the same than on the operator who leases from the fee owner and pays a royalty to such owner, and therefore imposes a penalty upon a citizen and operator who attempts to operate his own property, and likewise imposes a greater tax upon the operator who holds low royalty leases, acquired many years ago, than upon an operator who holds leases upon similar property upon which higher royalties are paid.

(*f*) That said statute provides for deductions from the value of the ore at the surface of the earth of the cost of opening the mine, which deduction varies greatly according to whether the mine may have been opened many years ago, when costs were low, or whether such mine has been opened in more recent years, and particularly during war times, when costs were high.

(*g*) That the said statute further fails to make any provision in terms for deductions or computation of interest on investments made many years ago, but flatly bases said deductions upon the cost of

opening up and development, regardless of when the same took place, and thereby makes the tax not uniform and equal as between operators, according to the time that they may have developed their respective properties.

260 (*h*) That the value of iorn ore varies greatly during a given year, and the said statute leaves it to the Minnesota Tax Commission arbitrarily to determine the time at which such values may be fixed.

(*i*) That the cost of separating the iron ore from the ore body varies greatly in different mines, according to the grade of ore, the character of the ore deposit, whether the same occurs in large masses, comparatively free from rock and other intrusions or has to be separated and sorted from foreign matter and other elements of like nature; that the cost of hoisting, elevating and conveying the iron ore to the surface of the earth also varies greatly with respect to different mines, depending upon the depth of the ore from the surface of the earth, the character and extent of the underground developments and other like factors, and that by reason of these facts there can be no uniform cost to be applied in arriving at the amount of the deduction provided for in sub-division 1 of Section 2 of said Act.

(*j*) That under the provisions of sub-division 2 of Section 2 of said Act, there is to be deducted from the value of the ore at the surface of the earth, for the purposes of arriving at the amount upon which the tax provided for in said Act is to be computed, in the case of open pit mines, for each ton of ore mined or produced during the year, an amount equal to the cost of removing the overburden, divided by the number of tons of ore uncovered; that the cost of removing the overburden from the ore deposits in open pit mines necessarily varies greatly with respect to different mines, as such cost depends upon the depth and character of the overburden, the accessibility of available "dumping" ground and other like considerations; further, that the number of tons of ore uncovered by removing the overburden from different mines is a variable quantity, depending upon the depth and width of the ore body uncovered, within the limits of the property owned or controlled by the particu-
261 lar operator and experience on the Mesaba Range has shown that the depth of such ore body varies from a few feet to two or three hundred feet in thickness.

(*k*) That the provisions of sub-division 3 of Section 2 of said Act introduce another element of variation and difference in the amount of deduction therein provided for, as respects underground mines, in that the cost of sinking and constructing shafts and running drifts is different as to each underground mine, depending upon the size, depth and construction material of the shaft and the character of the earth and rock, through which the same is sunk and the number, extent and character of the drifts and the material through which the same are driven; that the number of tons of ore that it can be determined can advantageously be taken out through such shafts and drifts necessarily depends not only upon the char-

acter of the ore body, the width of the veins or deposits of ore bu
also upon the extent of underground workings, drilling or othe
known methods of exploration and development; that it is a wel
known fact that the development and working of the undergroun
mines on what is known as the Vermilion Range, in the State o
Minnesota, is very much more expensive than the development an
working of underground mines on the Mesaba Range, owing to th
fact that the iron ore deposits on the latter range are of a horizonta
nature lying comparatively near the surface, while the iron or
deposits on the Vermilion Range occur in what is known as vertica
veins running to great depth, some of said deposits having bee
worked to a depth as great as 2,000 feet, and said veins are enclose
in very hard rock, rendering the cost of sinking shafts and drivin
drifts very much more expensive than similar work upon the Mesab
Range.

(*l*) Generally the operation of said Act as a whole and of Sectio
2 thereof, providing for the various deductions therein prescribe
will necessarily result in inequality and lack of uniformity in an
tax that may be levied and assessed thereunder.

262 12. Further that the tax imposed by said Act, considere
as a property tax, is a tax upon property which has becom
the subject of interstate transportation; that said tax is not lai
upon said ore if and when mined, but is imposed upon said ore i
and when the same is raised to the surface of the earth; that th
process of mining and transporting iron ore in Minnesota is prac
tically a continuous and single process; in open pit mines said ore i
dug from the earth by steam shovel and placed immediately in car
of an interstate common carrier awaiting the same in the open pi
of said mine and by the same is brought to the surface of the earth
that from said point the movement of said ore in cars to the poin
where the same are assembled into trains, from thence to the Lak
Superior docks for delivery into vessels and by vessel to lower lak
ports in States other than Minnesota, is practically continuous; tha
the process in the case of underground mines is substantially th
same, save that the ore is hoisted to the surface and there immediatel
at the surface dumped into the cars of the interstate common carri
at the shaft house or headframe; that this process is true of all th
ore shipped, save as to a comparatively small tonnage thereof, whic
is temporarily placed in stockpile; that all ore so mined and
transported is from the moment of its severance from the realty th
subject of interstate transportation and interstate commerce, and
tax thereon is a direct interference with and burden upon interst
commerce and therefore in violation of Article 1, Section 8 of th
Constitution of the United States, vesting in Congress the power
regulate commerce among the several states.

13. Further that if the tax imposed or attempted to be imposed
said Act is not a property tax but is a tax upon the business and up
the mining and producing of iron ore then it is a direct interfere
with and a burden upon interstate commerce and therefore in vio

tion of Article 1, Section 8 of the Constitution of the United
263 States, vesting in Congress the power to regulate commerce among the several states; that since the commencement of the iron mining industry in Minnesota, to the present time, substantially all, i. e. upwards of 99% of the ore mined and produced in Minnesota has been sold and shipped to consumers in other states.

14. That if said Act is an Act imposing a tax upon occupations it denies to this plaintiff the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States and violates the provisions of Section 1, Article 9 of the Constitution of the State of Minnesota in that it singles out unreasonably and arbitrarily the business of mining iron ore and other ores, and imposes a tax thereon alone, discriminating against said occupation and unreasonably excluding from its operation other like occupations such as the mining and quarrying of rock, the digging of sand and gravel, ditching, grading, stone crushing, and also the business of those persons who may be and who in fact are engaged in removing overburden from open pit mines upon the Mesaba Range in Minnesota.

15. That if the tax imposed by said Act is not a property tax as hereinbefore alleged and is an occupation tax then the same is invalid for the reason that the Constitution of the State of Minnesota does not permit the imposition of any tax upon occupations as a subject of taxation.

16. That if the tax imposed by said Act is not a tax upon property as hereinbefore alleged and not a tax upon occupations, then it is a tax upon the income of persons engaged in the production of iron or other ores and does not impose a tax upon the income of any other person or class of persons or income derived from any other source, and there is no other class of income taxed in any manner under the laws of Minnesota; that the Constitution of the State of Minnesota
264 does not permit the imposition of a tax upon income of one person or of one class of persons or upon income from a single source to be selected by the Legislature for the purpose of taxation and does not permit the imposition of any income tax whatsoever.

17. That said Act further violates the Fourteenth Amendment of the Constitution of the United States in that it deprives all persons, including this plaintiff, engaged in mining or producing iron ore in the State of Minnesota of the equal protection of the laws and renders their property liable to be taken without due process of law, all in violation of the Fourteenth Amendment to the Constitution of the United States, in that the penalties fixed for the failure of said persons to make reports as provided in Section 3 of said Act and for failure to open for the inspection and examination of the Minnesota Tax Commission their books, waybills, inventories, correspondence and memoranda relating to or used in connection with their ownership or operation of a mine or mines in Minnesota and for failure to

pay the tax imposed or sought to be imposed by said Act are so excessive as to intimidate, coerce and compel said persons, including this plaintiff, to comply with the provisions of said Act without the freedom of resorting to the courts to test the validity of the provisions of said Act.

18. That no provision is made in said Act for the refundment of any money paid as taxes pursuant to its provisions if it be finally found and determined that said Act is in fact unconstitutional and void, and there is no provision in the Statutes of Minnesota giving to this plaintiff or anyone the right or power to compel the State of Minnesota to refund money paid as taxes pursuant to said Act; the only way open to this plaintiff in a court of law to test the constitutionality or validity of said Act is to refuse to comply with said Act and to refuse to pay the taxes which said Act purports to impose and thereby expose itself to the danger of being liable for
265 the excessive penalties provided in said Act, therefore this plaintiff has no plain, adequate and complete remedy at law.

19. That if for the purpose of testing the constitutionality and validity of said Act, this plaintiff refuses and declines to make such report on or before February 1st, 1922, or to pay said tax or otherwise to comply with said Act, it and its officers and agents may be and as this plaintiff verily believes will be subjected to many suits brought by or on behalf of the State of Minnesota, that the defendants constituting the Minnesota Tax Commission have, as hereinbefore alleged, required from this plaintiff separate reports from each mine operated, and if said defendants proceed to determine a tax with reference to each mine (except where the operation of such mine was conducted at a loss or so that no taxable value is arrived at under said Act) and cause a draft to be drawn for the taxes so determined against each such mine, and said defendant Hilton, as Attorney General, brings suit on each of said drafts, there will result a multiplicity of suits against this plaintiff; a criminal action may be brought against this plaintiff's officers and agents as aforesaid by reason of failure to open for inspection and examination to the Minnesota Tax Commission its books, waybills, inventories, correspondence and memoranda as provided in Section 13 of said Act, and actions may be brought against this plaintiff, in case it fails to pay the tax aforesaid for the year 1921 and for the succeeding years, for the collection of said tax as provided in said Act. Therefore, this plaintiff, itself and its officers and agents, will be subjected to a multiplicity of suits.

20. That if the plaintiff is not granted immediate relief by this court of equity, defendants Lord, Armson and Halden, acting as the Minnesota Tax Commission, threaten to and will, as this plaintiff believes, require or attempt to require shortly after February 1, 1922, this plaintiff to open to said defendants for examination and
266 inspection its books, waybills, inventories, correspondence and memoranda as provided in Section 13 of said Act, and if this plaintiff's agents or officers having control of such papers and books

shall neglect and refuse, on demand of said defendants acting as the Minnesota Tax Commission, to permit such examination and inspection, they will be guilty of a gross misdemeanor and punishable therefor; further, if, for the purpose of testing the constitutionality and validity of said Act, this plaintiff refuses to render the report required in Section 3 of said Act by February 1st, 1922, a penalty of ten per cent of the tax computed by the Minnesota Tax Commission will, under the provisions of Section 6 of said Act, be added to the tax, therefore this plaintiff is threatened with immediate and irreparable injury.

21. That by reason of all of the foregoing facts set forth in this bill of complaint this plaintiff is threatened with immediate and irreparable injury and a multiplicity of actions if this court of equity does not grant the relief herein prayed, and has and can have no plain, adequate and complete remedy at law.

Wherefore, this plaintiff prays this Honorable Court for a judgment and decree against the defendants and each of them as follows:

1. To grant to it and against the defendants and each of them, individually or in their representative capacities as officers of the State of Minnesota, a temporary restraining order to be replaced by an interlocutory injunction to be granted by an enlarged court of three judges, pursuant to Section 266 of the Judicial Code of the United States, and that upon a final hearing, to be succeeded in turn by a permanent injunction restraining, enjoining and prohibiting said defendants, either as individuals or as representatives of the State of Minnesota, from acting under or in pursuance of or from in any way carrying out or enforcing the provisions of the Act of the Legislature of the State of Minnesota, being Chapter 223 of
267 the Laws of Minnesota for 1921 and entitled "An Act providing for the imposition of a tax upon persons, copartnerships, companies, joint stock companies, corporations and associations however organized, engaged in the business of mining or producing iron ore and other ores, for enforcing and collecting the same, and prescribing penalties for the violation thereof."

2. To grant to this plaintiff such other and further relief as this Honorable Court shall deem just and equitable.

H. J. GRANNIS,
Solicitor for Plaintiff.

407-8 First Nat'l Bnk. Bldg., Duluth, Minnesota.

WILLIAM P. BELDEN,
Of Counsel.

268–275 STATE OF MINNESOTA,
County of St. Louis, ss:

Max H. Barber, being first duly sworn, on oath, says that he is and during all of the year 1921 was District Superintendent of The

Mesaba-Cliffs Iron Mining Company, the above named plaintiff, and as such has charge of its mining operations and business in the State of Minnesota; that he had read the foregoing Bill of Complaint and knows the contents thereof and that the same is true of his own knowledge, except as to matters therein stated on information and belief and as to those matters he believes it to be true.

MAX H. BARBER.

Subscribed and Sworn to before me, this 23rd day of January, 1922.

[SEAL.] H. J. GRANNIS,
Notary Public, St. Louis County, Minnesota.

My Commission expires October 8, 1925.

* * * * * * *

276 United States District Court, District of Minnesota, Fifth Division.

In Equity.

THE MESABA-CLIFFS IRON MINING COMPANY, Plaintiff,

vs.

SAMUEL LORD, JAMES G. ARMSON, and ODIN HALDEN, Constituting the Minnesota Tax Commission; Clifford L. Hilton, Attorney General of Minnesota; Raymond P. Chase, State Auditor of Minnesota, and Henry Rines, State Treasurer of Minnesota, Defendants.

Answer to Bill of Complaint.

The above named defendants for their joint and several answer to the bill of complaint of the plaintiff in the above entitled cause, respectfully represent and state to the court as follows:

I.

The defendants admit the allegations of paragraph 1 of said bill of complaint.

II.

Defendants admit the allegations of paragraph 2 of said bill of complaint, except as to the residence of Attorney General Clifford L. Hilton, which the defendants allege to be in Otter Tail county, Minnesota.

III.

Defendants admit the allegations of paragraph 3 of said bill of complaint.

IV.

277 Defendants admit the allegations of paragraph 4 of said bill of complaint, except that they deny that plaintiff's open pit mines have therein railroad tracks and cars operated by common carriers. On the contrary, they allege that the railroad tracks in such open pit mines are owned by the plaintiff and the cars on such tracks are operated, not by common carriers, but by the plaintiff's own employes.

V.

Defendants admit the allegations of paragraph 5 of said bill of complaint.

VI.

Defendants admit that plaintiff in this suit seeks to enjoin said defendants from enforcing the provisions of a certain act of the legislature of the state of Minnesota, being chapter 223, of the Laws of Minnesota for the year 1921, upon the ground of its unconstitutionality.

Defendants admit that the taxes which plaintiff would be required to pay for the year 1921 under said act exceed the sum of $3,000 and that the matter in dispute exceeds, exclusive of interest and costs, the sum of $3,000.

Defendants expressly deny that this is a suit properly brought in equity and expressly deny that any sufficient ground for equitable relief is stated or exists, and defendants deny that said act is in violation of any provision of the constitution of the United States or of the state of Minnesota.

VII.

Defendants admit the allegations of paragraph 7 of said bill of complaint.

VIII.

Defendants deny that said act, to-wit: chapter 223, Laws of Minnesota 1921, is unconstitutional upon any of the grounds set forth in paragraph 8 of said bill of complaint. Defendants admit 278 that unless restrained they will enforce said law.

IX.

Defendants admit the allegations of paragraph 9 of said bill of complaint.

X.

Defendants deny all of the allegations of paragraph 10 of the bill of complaint, except they admit that an ad valorem tax is imposed by the laws (Chap. 483, Laws 1913) of the state upon iron mines.

XI.

Defendants deny that said law violates the provisions of the Fou teenth amendment to the Constitution of the United States or th provisions of section 1, article 9, of the Constitution of the state o Minnesota, in any of the particulars set forth in said paragraph 11 and in respect to each subdivision of said paragraph defendants al lege as follows:

(*a*) They allege that the tax assessed under the terms of said la may be collected, only, in an ordinary civil action for the recover of money, in which action the person assessed may contest the righ of the state to assess such tax and the amount thereof and he ma assert without restriction any defense which he may have in respec to such tax or any part thereof. Upon the trial of such suit ther will be no conclusive presumption of any kind and the findings an decisions of the tax commission and the drafts of the auditor furnish only prima facie evidence of the validity of the assessment and o the correctness of the amount of the tax.

(*b*) Defendants deny that legislative power is delegated to th Minnesota Tax Commission by said law or that the determination or findings of that commission are conclusive as to any of the matter set forth in subdivision (*b*) of paragraph 11 of said bill of complaint

279 (*c*) Defendants allege on information and belief that each of the leases under which plaintiffs, respectively, carry o their mining business requires the lessee to pay all taxes assesse against the property so leased, and they further allege that said law in authorizing persons engaged in the mining business to deduc from the valuation of each ton of ore mined each ton's proportion of ad valorem taxes paid by them, tends to equalize the burden o the tax provided for in said law, particularly in respect to adjustin the same as between open pit and underground mines. That mining or producing ore from an underground mine is widely different from mining or producing ore from an open pit mine. The ore in under ground mines lies at a considerable depth below the surface of th earth; shafts are sunk to the ore bodies; tunnels or drifts are drive at different levels into the ore bodies and the ore thus reached i separated and brought to the mouth of the shaft by manual labor The amount of ore which may be extracted from an underground mine in a given time is restricted by the limitations of space and openings thus imposed. The ore in open pit mines lies near th surface of the earth; the over burden of the ore is stripped off th ore bodies and thereafter the operation is simply one of separating the ore by means of steam shovels and loading it into cars brought into the pit of the mines as hereinafter described. The cost of pro ducing a ton of ore from an underground mine greatly exceeds th cost of procuring a ton of ore of like quality from an open pit mine

(*d*) Defendants deny that said law imposes any different tax o efficient operators than upon inefficient operators, or that it protect the wasteful or improvident operator; they deny that mine operator

will be either more or less efficient or wasteful on account of the imposition of such tax; on the contrary they allege that each person or corporation will mine his ore as economically as possible. They allege that said law operates, in this respect, to equalize, as far as possible, the tax on this occupation or business, so far as the special circumstances and conditions surrounding the persons, firms or corporations engaged in such occupation may be practically foreseeable.

(*e*) Defendants deny that said law imposes a greater tax on the operator who owns his own property than on one who leases his property and pays a royalty to the owner, or that it imposes a greater tax upon the operator who pays a lower royalty than another. They admit that such royalties as are actually paid according to the circumstances of the different operators and the condition of their respective properties are deductible. But they allege that if the law failed to permit such deductions, it would bear unequally upon the different persons engaged in the occupation or business of mining, particularly since the royalties to be paid will vary in respect to the value of the ore in its natural bed and its value therein will be greatly affected by the kind of a mining operation necessary to extract it, since a higher royalty will be paid for the right to mine ore of a given quality if it can be mined by open pit methods than would be paid if it could only be mined by underground mining methods.

(*f*) Defendants admit the allegations of subdivision (*f*) of paragraph 11 of the bill of complaint. Furthermore, they allege that the cost of opening one mine may and will vary from the cost of opening another mine, regardless of the period in which any such mine may be opened. They allege that the law does not lack uniformity of operation because of such differences in the circumstances of those engaged in the occupation of mining, or that on that account uniformity would have been promoted by refusing to permit any deduction for such cost or in permitting an arbitrary deduction, without reference to the actual cost of opening the mine.

(*g*) Defendants admit that said law fails to permit deductions on account of interest on investments, as alleged in subdivision (*g*) of paragraph 11 of the bill of complaint. They allege that it was not the intent or purpose of the legislature to permit miners to deduct all of the costs of carrying on their business, but that it was the intention of the legislature to permit such deductions as in a practical and substantial way tended to equalize the burden of their occupation tax by allowing such deductions as would equalize the difference between open pit mining operations and underground mining operations as aforesaid. They further allege that the amount of interest upon such investments, when apportioned to each ton of ore mined, would be infinitesimal and would have an insignificant effect upon the amount of taxes to be collected under said law.

(*h*) Defendants admit that the value of ore may vary during a given year, but they deny that the tax commission is given any arbitrary power or authority to determine the time for which such values may be reckoned.

(*i*) Defendants admit the allegations of subdivision (*i*) of paragraph 11 of the bill of complaint.

(*j*) Defendants admit the allegations of subdivision (*j*) of paragraph 11 of the bill of complaint.

(*k*) Defendants admit the allegations of subdivision (*k*) of paragraph 11 of the bill of complaint.

(*l*) Defendants deny the allegations of subdivision (*l*) of paragraph 11 of the bill of complaint.

XII.

Defendants repeat their denial that said law imposes a property tax. They deny that the process of mining and transporting ore is a continuous process and deny that plaintiff's iron ore is mined and transported as set forth in paragraph 12 of the bill of complaint. They allege that, except as to "wash ore" or so-called "low grade ore" the manner and method of delivering the same for transportation, and for transporting same is as follows:

282 The plaintiff has constructed and owns railway tracks running through and upon its open pit mines; that said plaintiff owns railway engines operated by its own employes; that the carrier operating the lines over which plaintiff's ore is to be shipped from said open pit mines, when called upon to do so by plaintiff, sets out on its side tracks for use of plaintiff such empty cars as plaintiff may require; that thereupon plaintiff, with its engines and through its employes, goes upon the sidings of such carrier and takes such empty cars into and upon such open pit mines, loads such cars with ore, and thereafter delivers them at such railway side tracks to such carrier with directions as to their movement and destination.

That ore from underground mines is brought to the surface, through shafts, in "skips," so-called, to the shaft house. During a part of the year the ore is deposited in pockets at the shaft house for loading into railway cars. During the remainder of the year the ore is carried from the shaft house to a stock pile, there to await the later loading into cars. That nearly 50% of the ore mined is so deposited in stock piles. The shaft house is reached by side tracks owned by carriers, which tracks lie directly beneath the pockets. Plaintiff calls upon the carrier to furnish such cars as it may require and these cars are set out upon such side tracks and plaintiff's employes move such cars, usually one or two at a time, beneath the ore pockets, load such cars, assemble them when loaded, and notify carrier of their readiness for movement, and the carrier then takes such shipment to destination. Ore in stock pile is loaded by plaintiff by steam shovels into cars similarly assigned by the carrier

and moved, assembled, and delivered by plaintiff in substantially the same manner as are cars loaded from pockets.

That "wash ore," so-called, is taken from the mine whether the same be an open pit mine or an underground mine, by plaintiff through its employes, and upon its own cars drawn by its own locomotives, and is carried and transported over its own railway
283 tracks to a washing plant or concentrating plant, distant from one to five miles from such mines; it is there beneficiated by plaintiff, that is, washed free of sand and other foreign substances, and thereafter such beneficiated ore, commonly called concentrates, is shipped by plaintiff to furnaces in its usual course of business.

Defendants deny that ore is the subject of interstate transportation from the time of its severance from the realty and deny that the tax imposed upon plaintiff interferes with or burdens commerce in violation of article 1, section 8, of the Constitution of the United States, as alleged in paragraph 12 of the bill of complaint.

XIII.

Defendants deny that such tax is a direct interference with or a burden upon interstate commerce. Defendants, although having no knowledge of the exact amount, admit that a very large percentage of the iron ore mined in Minnesota, after being mined, is, and for some time to come, may be, shipped via the Great Lakes to so-called lower lake ports and there sold or delivered to furnace consumers.

Further answering the allegations of paragraph 13, of the bill of complaint, the defendants reassert the allegations set forth in paragraph 12 of this answer, which allegations relate to the manner of mining iron ore and the delivery thereof to the initial common carrier for transportation. Defendants state that they have no knowledge but believe to be true the allegations in paragraph 13 of the bill of complaint relating to contracts covering the sale and delivery of the estimated output of each of plaintiff's mines in Minnesota.

XIV.

Defendants deny that the legislative act in question, by singling out the business of mining ore, makes an illegal classification in violation of the fourteenth Amendment to the Constitution of the United States or of section 1, article 9, of the state
284 Constitution, and defendants allege that there is in Minnesota no other occupation or business similar to or like the business of mining or producing iron ore or other ores.

XV.

Defendants deny the allegations of paragraph 15 of the bill of complaint.

XVI.

Defendants deny that the tax imposed by the act in question is an income tax and, on the contrary, they allege that it is the purpose and effect of said statute to impose a business or occupation tax upon plaintiff based upon the amount of ore produced, which tax is equalized and made uniform by basing the tax upon the value of the ore produced and by allowing certain deductions therefrom, which deductions are principally designed to equalize the tax upon underground mining and the tax upon open pit mining. That mining or producing ore from an underground mine is widely different from mining or producing ore from an open pit mine. The ore in underground mines lies at a considerable depth below the surface of the earth; shafts are sunk to the ore bodies; tunnels or drifts are driven at different levels into the ore bodies and the ore thus reached is separated and brought to the mouth of the shaft by manual labor. The amount of ore which may be extracted from an underground mine in a given time is restricted by the limitations of space and openings thus imposed. The ore in open pit mines lies near the surface of the earth; the over burden of the ore is stripped off the ore bodies and thereafter the operation is simply one of separating the ore by means of steam shovels and loading it into cars brought into the pit of the mines as hereinbefore described. The cost of producing a ton of ore from an underground mine greatly exceeds the cost of procuring a ton of ore of like quality from an open pit mine.

285 XVII.

Defendants deny that said act violates the "equal protection" or "due process of law" provisions of the Fourteenth Amendment to the Constitution of the United States and defendants deny that the penalties (prescribed by said act) are excessive or are such as to intimidate or coerce plaintiff as alleged in paragraph 17 of the bill of complaint.

XVIII.

Defendants deny that the plaintiff has no plain, adequate and complete remedy at law because of the penalties provided for in said act, and in that connection defendants allege that the prescribed penalties are not more severe than are ordinarily and usually provided for in taxation laws.

XIX.

Defendants deny that if plaintiff, for the purpose of testing the constitutionality and validity of said act, refuses and neglects to comply with the requirements thereof, it and its officers and agents may be, or will be, subjected to many suits brought by or on behalf of the state of Minnesota. Defendants admit that the Minnesota Tax Commission has requested this plaintiff as to each property

being mined by it to file the report required by section 3 of said act. Defendant Hilton as attorney general denies that he intends or proposes to bring separate actions against plaintiff on account of each of its mines, and alleges that said chapter 223, Laws 1921, contemplates but a single action against plaintiff if it shall fail to pay taxes assessed against it thereunder, and defendant Attorney General Hilton alleges that he will commence and prosecute against plaintiff only the single suit provided for in said act.

XX.

Defendants admit the allegations of paragraph 20 of the bill of complaint, except they expressly deny that the plaintiff is threatened with immediate and irreparable injury.

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XXI.

Defendants deny that the plaintiff is threatened with immediate and irreparable injury and a multiplicity of suits. They deny that the plaintiff has no plain, adequate and complete remedy at law as alleged in paragraph 21 of the bill of complaint.

Having thus made a full answer to all the matters and things contained in the bill, the defendants pray that the bill be dismissed and for judgment for their costs in this behalf incurred.

CLIFFORD L. HILTON,
Attorney General;
EGBERT S. OAKLEY,
Deputy Attorney General;
MONTREVILLE J. BROWN,
Assistant Attorney General,
Solicitors for Defendants.

102 State Capitol, St. Paul, Minnesota.

STATE OF MINNESOTA,
County of Ramsey, ss:

Samuel Lord, being first duly sworn, says that he one of the defendants named in the bill of complaint herein; that he has read the foregoing answer and knows the contents thereof and that the same is true of his own knowledge, except as to matters therein stated upon information and belief, and as to those matters he believes it to be true.

SAMUEL LORD.

Subscribed and sworn to before me February 18, 1922.
[SEAL.] C. K. SPANGENBERG,
Notary Public, Ramsey County, Minn.

My commission expires March 11, 1922.

Filed Feb. 20, 1922.
JOEL M. DICKEY, *Clk.,*
By J. C. HERMAN ENGEL, *Deputy.*

287 That on the 24th day of January, A. D. 1922, came the plaintiffs, Bennett Mining Company, Corsica Iron Company, Crete Mining Company, Vermillion Mining Company, Mohawk Mining Company, Hoyt Mining Company, Hobart Iron Company, Bowe-Burke Mining Company, Adriatic Mining Company, Hanna Ore Mining Company, Consumers Ore Company, Virginia Ore Mining Company, La Rue Mining Company, Merrimac Mining Company, Draper Iron Company, Hillcrest Mining Company, York Iron Mining Company and Julia Mining Company, by their attorneys, and filed in the Clerk's office of said Court, their bill of complaint, which is in words and figures as follows, to wit:

288 United States District Court, District of Minnesota, Fifth Division.

BENNETT MINING COMPANY, CORSICA IRON COMPANY, CRETE Mining Company, Vermillion Mining Company, Mohawk Mining Company, Hoyt Mining Company, Hobart Iron Company, Bowe-Burke Mining Company, Adriatic Mining Company, Hanna Ore Mining Company, Consumers Ore Company, Virginia Ore Mining Company, La Rue Mining Company, Merrimac Mining Company, Draper Iron Company, Hillcrest Mining Company, York Iron Mining Company, and Julia Mining Company, Plaintiffs,

vs.

SAMUEL LORD, J. G. ARMSON, and ODIN HALDEN, Constituting the Minnesota Tax Commission; Clifford L. Hilton, Attorney General of Minnesota; R. P. Chase, State Auditor of Minnesota, and Henry Rines, Treasurer of Minnesota, Defendants.

Bill of Complaint.

Plaintiffs for a cause of action against the defendants, allege and show to the Court as follows:

1. That the plaintiffs, Bennett Mining Company, Corsica Iron Company, Crete Mining Company, Vermillion Mining Company, Mohawk Mining Company, Hoyt Mining Company, Hobart Iron Company, Bowe-Burke Mining Company, Adriatic Mining Company, Hanna Ore Mining Company, Consumers Ore Company, Virginia Ore Mining Company, La Rue Mining Company, Merrimac Mining Company, Draper Iron Company, Hillcrest Mining Company, York Iron Mining Company, and Julia Mining Com-
289 pany, are corporations, each created, organized and existing under the laws of the State of Minnesota, and each of said plaintiffs is authorized to do business in said State, and each of said plaintiffs is the owner and holder of long term mining leases, extending for upwards of twenty years, upon various iron mines on the Mesaba, Vermillion or Cuyuna Range in the State of Minnesota, and each of said plaintiffs is and for years past has been and will for many years to come be engaged in the business of mining and pro-

ucing iron ore from said mines, and each of said plaintiffs is, on ccount of their holdings, obliged to pay and does pay ad valorem axes upon said properties in said State.

2. That the defendants Samuel Lord, J. G. Armson and Odin Ialden constitute the Minnesota Tax Commission, which Commis-ion is created under the laws of the State of Minnesota. That said)din Halden is a resident and citizen of the County of St. Louis, State of Minnesota; that said Samuel Lord is a resident and citizen f Dodge County, Minnesota, and said J. G. Armson is a resident and itizen of Washington County, Minnesota. That defendant Clifford . Hilton is Attorney General of the State of Minnesota and a resi-lent and citizen thereof, defendant R. P. Chase is Auditor of the State of Minnesota and a resident and citizen thereof, and defendant Henry Rines is Treasurer of the State of Minnesota and a resident nd citizen thereof.

3. That at the 1921 session thereof, the legislature of the State of Minnesota passed Chapter 223 of the Session Laws of 1921 of said tate, a copy of which is on page 6 of Exhibit A, hereto attached.

4. That pursuant to said statute the defendants Samuel Lord, J. G. Armson and Odin Halden have sent blanks to each
289½ of the above named plaintiffs, copy of which, marked "Exhibit A" is hereto attached, except that in the blanks so sent o these respective plaintiffs there was filled in on the face thereof nd on the second page thereof the names of these respective plain-iffs, with the name and description of each particular mine, a sepa-ate blank being sent to each of the said plaintiffs for each mine wned or controlled by them respectively, and the said defendants, ursuant to said Chapter 223 of the Laws of 1921, have demanded hat these plaintiffs fill in and verify the information called for in aid blanks and file such verified information with said Minnesota Tax Commission on or before February 1st, 1922, and have de-nanded that these plaintiffs furnish such information, including the nost minute and private details as to the cost of mining, selling price nd analysis of the ore mined and produced by them, their expenses f operation and administration, the amount of state and federal axes paid by them, commissions paid, royalties paid, original costs f development, etc., much of which it is very difficult and some of hich it would be practically impossible for these plaintiffs to fur-ish and some of which information is not in the possession of these laintiffs, but if it exists at all, would be in the possession of the pred-cessors of these plaintiffs in the ownership and control of their espective properties.

5. That the defendants Samuel Lord, J. G. Armson and Odin Ialden are threatening to levy taxes against each of the above named laintiffs and to assess penalties against them, and to certify the amounts of such taxes and penalties to the defendant R. P.
290 Chase, State Auditor, and said defendant R. P. Chase is threatening to make his draft upon each of said plaintiffs for

the amount of taxes and penalties thus certified and to place the same in the hands of Henry Rines, State Treasurer, for collection, and the defendant Henry Rines is threatening to deliver such drafts to the defendant Clifford L. Hilton as Attorney General, and the defendant Clifford L. Hilton is threatening to bring actions thereon against these plaintiffs, all pursuant to the provisions of said Chapter 223 of the Laws of 1921, and, upon information and belief, the plaintiffs alleged that the said defendants propose to make said assessments and issue said drafts and bring said suits against these plaintiffs with reference to each particular mine which the plaintiffs own or operate and to cause a multiplicity of vexatious suits against each one of these plaintiffs, and the said defendants are so threatening to and will, unless restrained by this Court, do all of said acts and the other acts required by said Chapter 223, and so interfere with the property and rights and privileges of these plaintiffs unless restrained by the Court.

6. Plaintiffs further allege that the amount of taxes which said defendants threaten to levy and collect against each of the plaintiffs for the year 1921 is upwards of $3,000.00, exclusive of interest, penalties and costs, and the amount of taxes which said defendants will attempt to levy against each of the plaintiffs for each of many successive years will be upwards of $3,000.00, exclusive of interest, penalties and costs, and that the amount of taxes for which each of the plaintiffs Bennett Mining Company, Corsica Iron Company, Crete Mining Company, Vermillion Mining Company, Hanna Ore Mining Company and La Rue Mining Coming is liable for
291 the year 1921, if said law is valid, is upwards of $3,000.00, exclusive of interest, penalties or costs.

7. Plaintiffs allege that the defendants constituing said Minnesota Tax Commission have sent these respective plaintiffs the above mentioned blanks and have demanded that they fill them out with reference to each separate mine, and upon information and belief allege that it is the intention of the defendants herein under said law to levy and assess taxes against these plaintiffs with reference to each particular mine in any case where the computations made by said defendants under said law would show a profit upon that particular mine, and to make no allowance to the said respective plaintiffs as against such a tax for instances where there are other mines which are or may be owned by the plaintiffs in which the computations would show a loss, and that the said defendants propose to make said assessments for each particular mine and cause drafts to be drawn for the amounts of such taxes on account thereof and bring separate suits on account of such respective drafts for said respective mines, and to bring suits each successive year against these plaintiffs accordingly, and to assess and collect penalties, and thus cause a multiplicity of suits. That said statute requires actions to be brought in the name of the State of Minnesota in the State Courts of Minnesota, either in Ramsey County or the County where the ore may be produced, and defendants are threatening such suits; that if plaintiffs should pay said tax they could not maintain a suit in the federal or

state courts to recover it, without the consent of Minnesota, as a State cannot be sued without its consent, and no such consent has been given; that there is, therefore, no adequate remedy at
292 law in the State or the federal courts, and plaintiffs, having none such, are entitled to seek equitable relief in the federal court. That said statute further provides for a penalty of ten per cent for failure to file reports, ten per cent additional for failure to pay by June 1st, and one per cent for the month of June, before even a suit could or would be brought, and one per cent per month thereafter, so that plaintiffs must face a penalty of at least twenty-one per cent before any suit would be brought and in case they lost such suit would have to pay such penalty without having any day in court to determine the correctness of the amount of any tax, and without any right of review, even before the Tax Commission.

8. Plaintiffs allege that said statute, Chapter 223 of the Laws of 1921, is unconstitutional and void as in violation of the Fourteenth Amendment of the Constitution of the United States, in that it attempts to abridge the privileges of these plaintiffs, citizens of the United States, in carrying on their legitimate business, by imposing a tax thereon, the tax so imposed being higher in proportion as the plaintiffs may conduct the business efficiently and economically, thus making them entitled to a less deduction in the computation of said tax from the value of the ore at the surface of the mine than in the case of others who may conduct their business in a careless and negligent manner and at a higher cost, and further that the said statute is an attempt to and does deprive these plaintiffs of their property without due process of law and denies to these plaintiffs the equal protection of the laws, amongst other things in the following particulars:

(*a*) That said statute provides for the levy and assessment of a tax against these plaintiffs without any opportunity on the
293 part of the plaintiffs to have their day in court or contest or dispute the amount of such tax to be levied, as said statute makes the levying of a tax under said law by the defendants constituting the Minnesota Tax Commission final and conclusive, and after the tax has been so levied and drafts drawn by the defendant Auditor and by him turned over to the Treasurer and by him to the Attorney General, requires the Attorney General to bring action on and for the amount of such draft, and there is no opportunity provided for the plaintiffs to defend against the amount of the tax, and no appeal or other procedure is provided by which the defendants may have their day in court to contest the amount of the tax so levied.

(*b*) That said statute delegates to the said Minnesota Tax Commission legislative powers in determining the amount of the tax and makes the determination of the said Minnesota Tax Commission conclusive, (1) as to the value of ore, (2) as to the number of tons uncovered in each open pit mine, (3) as to the number of tons that can be advantageously taken out through each shaft or drift in an under-

ground mine, and (4) in fact as to all the subtractions which are to be made from the value of the ore in determining the taxable value.

(*c*) That said statute further allows a deduction, under the 5th paragraph of Section 2 of said Act, of a percentage of the ad valorem taxes levied for said year aganst the realty in which the ore is deposited, equal to the percentage that the tons mined or produced during such year bears to the total tonnage in the mine, whereas the taxes levied against the realty in which the ore is deposited bear no necessary or proper relation to the taxes levied against the ore
294 alone or the value thereof, since under the statutes of Minnesota the ad valorem taxes on realty include the value of the surface and buildings thereon, as well as the ore, and further because the ad valorem taxes on real estate vary greatly in rates in the different localities where the mines are situated, sometimes as much as two or three hundred per cent, so that this deduction is two or three times as much in one instance as in another.

(*d*) That said statute imposes a greater tax on efficient and economical operation, by allowing a greater deduction where the cost of operation is greater, and protects the improvident and wasteful operator against the provident and skilful operator, and denies to these plaintiffs the equal protection of the law in conducting their operations efficiently and economically.

(*e*) That said statute imposes a greater tax on the operator who operates his own property than on the operator who leases from the owner and pays a royalty to the owner, and therefore imposes a penalty upon a citizen and operator who attempts to operate his own property, and likewise imposes a greater tax upon the operator who holds low royalty leases, acquired many years ago, as is the case of these plaintiffs, than upon an operator who holds leases upon similar property upon which higher royalties are paid.

(*f*) The said statute likewise exempts from taxation under it the lessee who has sub-leased his property at an advanced royalty or rental, while imposing such a tax against a lessee who undertakes to operate his property under a direct lease, as is the case with these plaintiffs.

(*g*) That said statute provides for deductions from the value of the ore at the surface of the earth of the cost of opening the
295 mine, which deduction varies greatly according to whether the mine may have been opened many years ago, when costs were low, or whether such mine has been opened in more recent years, and particularly during war times, when costs were high.

(*h*) The said statute further fails to make any provision in terms for deductions or computation of interest on investments made many years ago, but flatly bases said deductions upon the cost of opening up and development, regardless of when the same took place, and thereby makes the tax not uniform and unequal as between operators, according to the time that they have developed their property.

(*i*) The said statute provides for deductions in case of a lessee according to the cost of opening up the property, divided by the number of tons which can be mined by such development, regardless of whether the lessee will be able to get out, during the life of his lease, all the ore covered by such computation, and allows no consideration in that regard to a lessee who may have spent enormous amounts of money in opening up a property under a lease, where he will not be able to derive the full benefits thereof because of the expiration of his lease before the ore developed is all mined out.

(*j*) That the number of tons in certain mines is not ascertainable with exactness, and often, in the actual mining out of such properties, it is found that the number of tons that can be obtained therefrom is more or less than the estimates thereof and it is difficult for the Minnesota Tax Commission or any other body to estimate with any degree of exactness the number of tons which may be developed therefrom.

(*k*) That the value of ore varies greatly during a given
296 year, and the said statute leaves it to the Minnesota Tax Commission arbitrarily to determine the time as of which such value may be reckoned.

(*l*) The said statute attempts to impose a garbled income tax on the plaintiffs and those engaged in mining, while imposing no tax on the income of any other persons or parties, nor do the statutes of the State of Minnesota impose any tax upon the income of any other persons or parties, except as this statute provides for such tax upon those engaged in mining.

(*m*) The said statute makes an improper and illegal classification for taxation, by singling out the single industry of mining ore and not attempting to tax others engaged in other sorts of mining or quarrying or any other industries, and so does not afford those engaged in mining ore, as are these plaintiffs, the equal protection of the law.

9. The plaintiffs further allege that said statute is a violation of Section 8 of Article I of the Constitution of the United States, in that it undertakes to provide for the interference with and placing of a burden upon interstate commerce. That the iron ore mined by plaintiffs and each of them is shipped by them to lower lake ports and into States outside of Minnesota, that a considerable portion of the iron ore so mined by plaintiffs is sold to purchasers who are non-residents of Minnesota, or foreign corporations, before said ore is mined. That as to plaintiff Bennett Mining Company all of the iron ore mined by said Company, and as to other plaintiffs a large portion of the iron ore mined by them, is actually under contract for sale in interstate commerce before it is mined or separated from the ore body. That said contracts for sale provide for the sale of the iron ore and the shipment thereof to non-residents of

the State of Minnesota or to foreign corporations and to
297 points outside of the State of Minnesota located at the lower lake ports. That the production or mining of ore by said plaintiffs is, therefore directly connected with the contract for sale in interstate commerce; that as to all of said plaintiffs said ore is placed in railroad cars of common carriers at the place where the same is brought to the surface of the earth, and is so placed in such railroad cars for shipment on its interstate journey to lower lake ports as above stated. That under said situation defendant members of said Tax Commission propose and are threatening to base said tax upon the selling price or value of said ore at lower lake ports, deducting therefrom the cost of handling the same in interstate commerce, and as a result, making the said tax higher proportionately as efficiency and economy is used in the handling of the same in interstate commerce. That under said statute, furthermore, it is required that all books, waybills, inventories, correspondence and memoranda relating to or used in the transaction of the business of these plaintiffs shall, on demand of the defendants composing said Tax Commission, be open to inspection and examination of said defendants, and said statute makes it a gross misdemeanor on the part of anyone having charge, control or possession of such documents to neglect or refuse said Tax Commission access thereto, and said defendants members of said Tax Commission are demanding of these plaintiffs the information contained in said waybills, memoranda and correspondence of these plaintiffs, including information from the books of these plaintiffs as to the costs, development and operation of said properties, washing and drying the ore long after it has reached the surface of the ground, the transportation charges paid by these plaintiffs for rail freight,
vessel freight, marine insurance, cargo analyses, vessel un-
298 loading, shrinking during transportation, and general tax on rail and vessel freight, all of which items are disbursements incurred with reference to said property in interstate commerce, and are also demanding from these plaintiffs statements of the amounts of federal taxes paid by the plaintiffs, which include taxes upon income accruing from the interstate business of these plaintiffs, the said plaintiffs each being engaged in interstate business, all of which is in interference with and a burden upon interstate commerce, and particularly the interstate business of these plaintiffs, and all of which is likewise in violation of the Fourteenth Amendment to the United States Constitution.

10. Plaintiffs further allege that said Chapter 223 of the Laws of 1921 of Minnesota is a violation of the Constitution of the State of Minnesota, and particularly of Section 1 of Article 9 thereof, which requires that "taxes shall be uniform on the same class of subjects," and the plaintiffs allege that the said statute violates the Constitution of the State of Minnesota and particularly said Article 9 in all of the particulars with reference to uniformity and inequality and denial of equal protection of the laws, hereinbefore set forth as matters wherein it violates the Constitution of the

United States, and particularly with reference to deductions for the cost of development and operation, payment of ad valorem taxes, the payment of royalties, and the inequalities with reference to the time of development of the properties and the cost thereof and interest thereon.

11. Plaintiffs further allege that the said statute violates the Constitution of the State of Minnesota, and particularly Section 1 of Article 9 thereof, in that it adopts an improper classification of the subjects for taxation and attempts to single out for taxation only those engaged in mining ore, while the Constitution of
299 the State of Minnesota provides for and permits the taxation of property only, and said Article 9 provides in substance, that taxes shall be uniform upon the same class of subjects and that they shall have a cash valuation, except that it provides that the legislature may authorize municipal corporations to levy assessments for local improvements upon property benefited, without regard to such cash valuation, the only other exception being that said Constitution permits the taxation of gross earnings of railroads. That said act further violates said Constitution of Minnesota in that it attempts to impose a tax on mining of ore, which is a right and privilege of these plaintiffs in the ownership of their property and which right is a natural attribute of and incident to the ownership of property. Said statute imposes such tax on the mining of ore, regardless of whether said ore may be sold or removed from the property or whether it may be used thereon by the owner for his own purposes, or whether, when once mined, it may be stockpiled and allowed to so remain for years on the owner's property. Said statute was not intended to and does not impose a tax upon those engaged by contract in stripping or developing mines or extracting ore from mines, who by such contract work may be deriving far greater profits than the owners, and so exempts those actually engaged in the occupation of mining or, if it should be held to apply to them, imposes a tax measured by the value of the ore, with the ownership of which such parties operating on contract are not concerned.

12. Plaintiffs further allege that said statute is not only an unconstitutional and invalid classification of the subjects of taxation, but does not operate uniformly upon those in the class designated—that is, those engaged in the occupation of mining ore—in that in imposing said tax it allows certain deductions to certain of those engaged in that business, for royalty paid, which it does not
300 allow to others engaged in the same business, and allows a greater deduction in figuring said tax for royalty to some engaged in the business than it does to others, and allows a greater deduction for ad valorem taxes and cost of development and operation to some than it does to others, and allows a deduction for the cost of development regardless of the time when the same took place or the interest on the investment, and so does not operate uniformly upon all those engaged in the business, and particularly, it imposes a tax at a higher rate upon an owner operating his own property or a

lessee holding a low royalty lease than it does upon those who do not operate their own property or who hold leases of the same kind of property at a higher royalty rate.

13. That in truth and in fact said Chapter 223 of the Laws of 1921 is an attempt to impose a garbled income tax upon the income of those engaged in mining ore and does not impose an income tax upon any other class of income and there is no other class of income taxed in any manner under the statutes of the State of Minnesota. That in truth and in fact the said law was intended to and does in effect impose a tax upon income derived from mining ore, and that the real intent and purpose of the legislature in passing said law was to impose such a tax, and in said statute it used the words "an occupation tax equal to six per cent of the valuation of all ores" as a mere scheme or device in attempting to avoid a direct income tax, or else it intended to impose a tax as set out in the next paragraph hereof, and that the Constitution of the State of Minnesota does not permit and prevents the imposition of any income tax.

14. That in the discussion of said bill in the legislature the same was often and commonly referred to as a "tonnage tax" and
301 was the result of many years of agitation for passage of a tonnage tax by the legislature of Minnesota, and the said statute is an attempt on the part of the state legislature to impose in effect a tax of six per cent upon the value of all ore mined or shipped by these plaintiffs as it exists in the ground, and is an attempt to evade the imposition of a direct tax for that purpose by the mere interposition of the words "an occupation tax equal to six per cent of the valuation," and that such direct or tonnage tax is unauthorized and is prohibited by the Constitution of the State of Minnesota and said statute violates the same in that respect. That the said legislature also, by Chapter 337 of the Laws of 1921, appropriated ten thousand dollars for the administration and enforcement of said Chapter 223 of the Laws of 1921, and the defendants herein are threatening to expend said sum, or a large part thereof, in harrassing these plaintiffs and others similarly situated, in attempting to collect taxes thereunder. That the Minnesota Tax Commission, in its 1920 report to the legislature, which report is provided for by Minnesota statutes, estimated that the tax to be produced for the State by such a statute, on a six per cent net profits tax, considering the annual mining and shipments from Minnesota at 35,000,000 tons, which is about the average, would run from about two million dollars to upwards of three million dollars.

15. That under Section 14 of said act all the taxes imposed and collected thereunder are to be paid into the State treasury for the benefit of the general revenue fund, and that said provision is, under said act, unconstitutional and void under the Constitution of Minnesota, in that it is an attempt on the part of the State in effect to single out one species of property for taxation for the support of the
302 State, while imposing no similar tax upon any other species of property within the State. That in the agitation for the

passage of said statute it was a common argument and statement of those in the legislature and elsewhere in favor thereof that iron ore was a natural heritage which should belong to the State, and that therefore a tax should be imposed upon it, to the exclusion of similar taxes upon other property, for the benefit of the State, and that said statute is a result of the general and continued agitation for the imposition of such a tax for the benefit of the State, in so singling out the one species of property belonging to these plaintiffs and others similarly situated, for the imposition thereof, in an attempt to frame a law which would in a large measure confiscate the property of these plaintiffs and others on the Iron Range, and with the expectation and understanding, as these plaintiffs are informed and believe, that if a law of such a nature could be passed and sustained in the courts, that the rates thereunder would thereafter be very much increased by amendment to such law. That the framers of said law therefore attempted by subterfuge to impose such tax upon the valuation of iron ore, to the exclusion of other classes of property, merely by naming and calling it an "occupation tax" and, instead of taxing the iron ore directly, levying a tax on the occupation, measured by the value of the ore, and that in these respects the statute violates not only the Constitution of the State of Minnesota, but also the Fourteenth Amendment to the Constitution of the United States, in denying to these plaintiffs and others similarly situated the equal protection of the laws.

16. These plaintiffs further allege that as to the respective properties controlled or operated by these plaintiffs, during the year 1921 and now, they hold them upon leases made many years ago
303 and which in general carry low royalties, and that therefore the tax attempted to be imposed upon these plaintiffs by said statute is higher than upon those who now hold similar properties, usually more recently acquired, and which carry higher royalties. That these plaintiffs each and all have pursued and are now pursuing economical and efficient methods of development and operation, and are by said statute, on account thereof, attempted to be taxed at a higher rate than others who pursued less economical and efficient methods of developing and operating. That in general the properties of these plaintiffs have been developed for many years, at a time when the costs thereof were low as compared with later years, and therefore said statute imposes a higher tax upon these plaintiffs than upon others who have similar properties developed at a higher cost, because the said statute allows these plaintiffs a less deduction in figuring the basis of said tax. That as to some of the plaintiffs, certain mines operated by them have been, during the year 1921 and during previous years, developed and operated at a loss, and, as plaintiffs are informed and believe, said defendants propose not to take into consideration or allow any deduction on account thereof as against any profit that may have accrued to said company in the operation of other properties. That said plaintiffs, or some of them, have less Federal taxes than others engaged in the operation of like mines, and, on account thereof, the tax which is attempted to be im-

posed upon said plaintiffs under said statute is increased, as it allows said plaintiffs less deduction than others in figuring the tax thereunder. That the deduction allowed by said statute on account of taxes paid on the real estate from which the ore in question may be mined operates unequally between these plaintiffs and other
304 parties, as amongst themselves and also as compared with others, because in some cases the deductions would be comparatively high and in others comparatively low, according to the municipalities in which the particular properties may be situated.

17. That while there is no method whatsoever provided in said statute for giving these plaintiffs their day in court as to the amount of the tax and the propriety thereof, yet the said statute provides that even before the Attorney General shall have the right to bring suit for the amount of the draft noted in such statute, there shall attach a penalty of ten per cent of the amount of the tax for failure to file a report and an additional ten per cent for failure to pay before the first day of June, and an additional one per cent for the month of June and an additional one per cent per month for such time as may elapse until the Attorney General might choose to bring such suit, which might be for a period of six years, before the same would be outlawed.

18. That the said defendants herein are threatening arbitrarily and unlawfully to levy taxes and penalties against these plaintiffs pursuant to said statute, and to bring a multiplicity of suits against these plaintiffs, and are now demanding the information from the records, books and papers, and the plaintiffs are facing, for their officers and representatives, a possible indictment or charge for gross misdemeanor if they refuse to furnish the same under said statute, and that the plaintiffs have no adequate remedy at law.

Wherefore, plaintiffs pray for judgment as follows:

1. That the defendants be enjoined and restrained from levying any tax, or taking any further procedure, or undertaking to levy any penalties upon such a tax, and from taking any action to interfere with or harrass these plaintiffs, or their agents or servants or
305 representatives, with reference to disclosing or furnishing information to the said defendants composing the Minnesota Tax Commission, and enjoining and restraining the said defendants from taking any further procedure as against these plaintiffs pursuant to the terms of said statute, and for a restraining order upon the filing of this complaint and a temporary injunction during the pendency of this action as against said matters.

2. That the said statute, Chapter 223 of the Laws of 1921 of the State of Minnesota, be declared invalid, and the defendants perpetually enjoined from taking any action whatsoever with reference thereto and against these plaintiffs, and from levying any tax against the plaintiffs or attempting to create any cloud upon the title to any of the plaintiffs' property under and by virtue of said statute.

3. For such other and further relief as to the Court may seem just and proper.

W. D. BAILEY,
W. D. BAILEY,
A. C. GILLETTE,
A. C. GILLETTE,
Solicitors for Plaintiffs.

1200 Alworth Building, Duluth, Minnesota.

WASHBURN, BAILEY & MITCHELL,
WASHBURN, BAILEY & MITCHELL,
Of Counsel.

306–312 STATE OF MINNESOTA,
County of St. Louis, ss:

Earl E. Hunner, being duly sworn, says: that he is an officer, to-wit: General Manager of Hanna Ore Mining Company, one of the plaintiffs in the above entitled action; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to such matters he believes it to be true.

EARL E. HUNNER.
(EARL E. HUNNER.)

Subscribed and sworn to before me this 24th day of January, 1922.

[Notarial Seal of St. Louis County, Minn.]

EDITH SUNDHOLM,
EDITH SUNDHOLM,
Notary Public, St. Louis County, Minn.

My commission expires July 20, 1924.

* * * * * * *

313 Endorsed: Filed January 24, 1922. Joel M. Dickey, Clerk, by E. Catherine Neff, Deputy.

That on the 14th day of February, A. D. 1922, there was filed in the office of the Clerk of said Court a stipulation that Donner Mining Company and Union Ore Company, be added as plaintiffs in said action, which is in words and figures as follows, to-wit:

314 United States District Court,

District of Minnesota,

Fifth Division.

BENNETT MINING COMPANY, CORSICA IRON COMPANY, et al.,
Plaintiffs,

vs.

SAMUEL LORD, J. G. ARMSON, et al., Defendants.

It is stipulated between the plaintiffs and the defendants in the above entitled action that Donner Mining Company and Union Ore Company, both Minnesota corporations, may be added on in all the proceedings herein, as plaintiffs in said action, with the same effect as though originally included in said proceedings.

WASHBURN, BAILEY & MITCHELL,
Attorneys for Plaintiffs and for Donner Mining Company and Union Ore Company.
CLIFFORD L. HILTON,
EGBERT S. OAKLEY,
Attorneys for Defendants.

Filed February 14, 1922.

JOEL M. DICKEY,
Clerk,
By J. C. HERMAN ENGEL,
Deputy Clerk.

That on the 20th day of February A. D. 1922, there was filed in the office of the Clerk of said Court, answer of the defendants to the bill of complaint of Bennett Mining Co., et al. in said cause, which is in words and figures following, to-wit:

315 United States District Court, District of Minnesota, Fifth Division.

In Equity.

BENNETT MINING COMPANY, CORSICA IRON COMPANY, CRETE Mining Company, Vermillion Mining Company, Mohawk Mining Company, Hoyt Mining Company, Hobart Iron Company, Bowe-Burke Mining Company, Adriatic Mining Company, Hanna Ore Mining Company, Consumers Ore Company, Virginia Ore Mining Company, La Rue Mining Company, Merrimac Mining Company, Draper Iron Company, Hillcrest Mining Company, York Iron Mining Company, Julia Mining Company, Donner Mining Company, and Union Ore Company, Plaintiffs,

v.

SAMUEL LORD, J. G. ARMSON, and ODIN HALDEN, Constituting the Minnnesota Tax Commission; Clifford L. Hilton, Attorney General of Minnesota; R. P. Chase, State Auditor, and Henry Rines, Treasurer of Minnesota, Defendants.

Answer to Bill of Complaint.

The above named defendants for their joint and several answers to the bill of complaint of complainants in the above entitled cause, respectfully represent and state to the court as follows:

I.

Defendants admit that each of the plaintiffs is a corporation as alleged in paragraph 1 of said bill of complaint. They be-
316 lieve, although without knowledge or information thereof, that each of said plaintiffs is the owner of mining leases as alleged therein. Defendants deny that any law or statute compels said plaintiffs to pay an ad valorem tax upon said properties and they allege that if said plaintiffs have paid or shall pay an ad valorem tax upon their said leaseholds, the obligations to do so has been assumed by them under the terms of their respective leases.

II.

Defendants admit all of the allegations of paragraph 2 of the bill of complaint.

III.

Defendants admit all of the allegations of paragraph 3 of the bill of complaint.

IV.

Defendants admit all of the allegations of paragraph 4 of the bill of complaint, except in so far as it is asserted in said paragraph

that it will be difficult or impossible to supply the information calle for by the Minnesota Tax Commission, which allegation is denied.

V.

Defendants admit the allegations of paragraph 5 of the bill c complaint, except in so far as it is alleged in said paragraph that is proposed to make assessments, issue drafts, and bring suits agains plaintiffs in respect to each particular mine owned or operated b plaintiffs, which allegations are denied.

VI.

Defendants admit all of the allegations of paragraph 6 of the bi of complaint.

VII.

317 Defendants deny that they intend, or propose, or hav threatened to bring separate suits against plaintiffs on ac count of each of their respective mines, and they allege tha chapter 223, Laws 1921, contemplates but a single suit against eac of said plaintiffs to recover taxes assessed against them thereunde and they allege that defendant Clifford L. Hilton, as attorney gen eral, will commence and prosecute against said plaintiffs, respec tively, if they shall fail to pay such taxes, only the single suit pro vided for in said law.

Defendants deny that plaintiffs, or any of them, are without a adequate remedy at law in either the state or the federal courts.

Defendants allege that said law provides for a penalty of ten pe cent of the amount of the tax assessed only in the event that plain tiffs shall fail to make a report of the ore produced or mined by them and its value; they allege that for failure to pay said tax by June 1, a ten per cent penalty is assessed under said law, and tha thereafter one per cent thereof is added each month to said ta until the same shall be paid, unless, in the suit provided for in such law, the court shall determine that such tax was illegally or exces sively assessed, without fault of plaintiffs, in which event no penalty in any amount may be recovered.

Defendants admit all other allegations of paragraph 7 of the bill of complaint.

VIII.

Defendants deny that said chapter 223, Laws 1921, is unconsti tutional upon any of the grounds set forth in paragraph 8 of said bill of complaint, and allege in respect to each subdivision of said paragraph, as follows:

318 (*a*) They allege that the tax assessed under the terms of said law may be collected, only, in an ordinary civil action for the recovery of money, in which action the person as sessed may contest the right of the state to assess such tax and the

amount thereof and he may assert without restriction any defense which he may have in respect to such tax or any part thereof. Upon the trial of such suit there will be no conclusive presumption of any kind and the findings and decisions of the tax commission and the drafts of the auditor furnish only prima facie evidence of the validity of the assessment and of the correctness of the amount of the tax.

(*b*) Defendants deny that legislative power is delegated to the Minnesota Tax Commission by said law or that the determination or findings of that commission are conclusive as to any of the matters set forth in subdivision (*b*) of paragraph 8 of said bill of complaint.

(*c*) Defendants allege on information and belief that each of the leases under which plaintiffs, respectively, carry on their mining business requires the lessee to pay all taxes assessed against the property so leased, and they further allege that said law, in authorizing persons engaged in the mining business to deduct from the valuation of each ton of ore mined each ton's proportion of ad valorem taxes paid by them, tends to equalize the burden of the tax provided for in said law, particularly in respect to adjusting the same as between open pit and underground mines. That mining or producing ore from an underground mine is widely different from mining or producing ore from an open pit mine. The ore in underground mines lies at a considerable depth below the surface of the earth; shafts are sunk to the ore bodies; tunnels or drifts are driven at different levels into the ore bodies and the ore thus reached is separated and brought to the mouth of the shaft by manual labor. The amount
319 of ore which may be extracted from an underground mine in a given time is restricted by the limitations of space and openings thus imposed. The ore in open pit mines lies near the surface of the earth; the over burden of the ore is stripped off the ore bodies and thereafter the operation is simply one of separating the ore by means of steam shovels and loading it into cars brought into the pit of the mines as hereinafter described. The cost of producing a ton of ore from an underground mine greatly exceeds the cost of procuring a ton of ore of like quality from an open pit mine.

(*d*) Defendants deny that said law imposes any different tax on efficient operators than upon inefficient operators, or that it protects the wasteful or improvident operator; they deny that mine operators will be either more or less efficient or wasteful on account of the imposition of such tax; on the contrary they allege that each person or corporation will mine his ore as economically as possible. They allege that said law operates, in this respect, to equalize, as far as possible, the tax on this occupation or business, so far as the special circumstances and conditions surrounding the persons, firms or corporations engaged in such occupation may be practically foreseeable.

(*e*) Defendants deny that said law imposes a greater tax on the operator who owns his own property than on one who leases his property and pays a royalty to the owner, or that it imposes a greater

tax upon the operator who pays a lower royalty than another. They admit that such royalties as are actually paid according to the circumstances of the different operators and the condition of their respective properties are deductible. But they allege that if the law failed to permit such deductions, it would bear unequally upon the different persons engaged in the occupation or business of
320 mining, particularly since the royalties to be paid will vary in respect to the value of the ore in its natural bed and its value therein will be greatly affected by the kind of mining operation necessary to extract it, since a higher royalty will be paid for the right to mine ore of a given quality if it can be mined by open pit methods than would be paid if it could be mined by underground mining methods.

(*f*) Defendants deny that said law exempts a lessee who subleases his property, or that it creates any other exemption. The tax is assessed only upon those engaged in the business or occupation of mining, and it does not apply to persons, whether lessees who assign their leases, or otherwise, who are not engaged in the business of mining.

(*g*) Defendants admit the allegations of subdivision (*g*) of paragraph 8 of the bill of complaint. Furthermore, they allege that the cost of opening one mine may and will vary from the cost of opening another mine, regardless of the period in which any such mine may be opened. They allege that the law does not lack uniformity of operation because of such differences in the circumstances of those engaged in the occupation of mining, or that on that account uniformity would have been promoted by refusing to permit any deduction for such cost or in permitting an arbitrary deduction, without reference to the actual cost of opening the mine.

(*h*) Defendants admit that said law fails to permit deductions on account of interest on investments, as alleged in subdivision (*h*) of paragraph 8 of the bill of complaint. They allege that it was not the intent or purpose of the legislature to permit miners to deduct all of the costs of carrying on their business, but that it was the intention of the legislature to permit such deductions as in a practical and substantial way tended to equalize the burden of their
321 occupation tax by allowing such deductions as would equalize the difference between open pit mining operations and underground mining operations as aforesaid. They further allege that the amount of interest upon such investments, when apportioned to each ton of ore mined, would be infinitesimal and would have an insignificant effect upon the amount of taxes to be collected under said law.

(*i*) Defendants admit the allegations or subdivision (*i*) of paragraph 8 of the bill of complaint. They allege, however, upon information and belief, that mining leases usually run for a period of fifty years, and they allege on information and belief that the leases of plaintiffs, respectively, are fifty-year leases, and that all of the ore in their said mines can be extracted therefrom during the terms of such leases.

(*j*) Defendants admit the allegations of subdivision (*j*) of paragraph 8 of the bill of complaint.

(*k*) Defendants admit that the value of ore may vary during a given year, but they deny that the tax commission is given any arbitrary power or authority to determine the time for which such values may be reckoned.

(*l*) Defendants deny the allegations of subdivision (*l*) of paragraph 8 of the bill of complaint.

(*m*) Defendants deny that said law makes an improper or illegal classification for taxation or deprives plaintiffs of the equal protection of the law as alleged in subdivision (*m*) of paragraph 8 of the bill of complaint. And they allege that there is no other business or occupation carried on in the state of Minnesota similar to that of mining ore.

IX.

Defendants deny that said law interferes with or imposes
322 any burden upon interstate commerce, or that it violates section 8, article 1, of the constitution of the United States, or the fourteenth amendment thereto.

Defendants admit that all ore mined by plaintiffs is shipped by them into other states than Minnesota. They deny that the ore mined by plaintiffs is delivered to or transported by interstate carriers, except in the following manner:

The plaintiffs have constructed and own railway tracks running through and upon their open pit mines; that said plaintiffs own railway engines operated by their own employes; that the carrier operating the lines over which plaintiffs' ore is to be shipped from said open pit mines, when called upon to do so by plaintiffs, sets out on its side tracks for use of plaintiffs such empty cars as plaintiffs may require; that thereupon plaintiffs, with their engines and through their employes, go upon the sidings of such carrier and take such empty cars into and upon such open pit mines, load such cars with ore, and thereafter deliver them at such railway side tracks to such carrier with directions as to their movement and destination.

That ore from underground mines is brought to the surface, through shafts, in "skips," so-called, to the shaft house. During a part of the year the ore is deposited in pockets at the shaft house for loading into railway cars. During the remainder of the year the ore is carried from the shaft house to a stock pile, there to await later loading into cars. That nearly 50% of the ore mined is so deposited in stock piles. The shaft house is reached by side tracks owned by carriers, which tracks lie directly beneath the pockets. Plaintiffs call upon the carrier to furnish such cars as it may require and these cars are set out upon such side tacks and plaintiffs' employes move
such cars, usually one or two at a time, beneath the ore
323 pockets, load such cars, assemble them when loaded, and notify carrier of their readiness for movement, and the carrier then takes such shipment to destination. Ore in stock pile is

loaded by plaintiffs by steam shovels into cars similarly assigned by the carrier, and moved, assembled, and delivered by plaintiffs in substantially the same manner as are cars loaded from pockets.

That "wash ore," so-called, is taken from the mine, whether the same be an open pit mine or an underground mine, by plaintiffs through their employes, and upon their own cars drawn by their own locomotives, and is carried and transported over their own railway tracks to a washing plant or concentrating plant, distant from one to five miles from such mines; it is there beneficiated by plaintiffs, that is, washed free of sand and other foreign substances, and thereafter such beneficiated ore, commonly called concentrates, is shipped by plaintiffs to furnaces in their usual course of business.

Defendants deny that the tax commission proposes or threatens to base its calculations of the taxes to be imposed under said law upon any valuation of such ore other than its valuation at the place of bringing the same to the surface of the earth in the manner provided for in said law.

Defendants admit that the tax commission has demanded of plaintiffs the information described in said subdivision of paragraph 9 of the bill of complaint, but they deny that such demand imposes any burden on or interferes with interstate commerce.

X.

Defendants deny that said law violates section 1, article 9, of the constitution of the state of Minnesota, or that it violates the constitution of the United States, as alleged in paragraph 10 of the bill of complaint.

XI.

Defendants deny the allegations of paragraph 11 of the bill
324 of complaint, except in so far as it is alleged in said paragraph that said law does not impose a tax upon those engaged by contract in stripping mines, which said allegation is admitted. They alleged that said law provides only for a tax upon persons or corporations engaged in the business of mining ore, and they deny that any person engaged in that business or occupation is exempt from such tax.

XII.

Defendants deny that said law will fail to operate uniformly upon those engaged in the occupation of mining ore in those particulars set forth in paragraph 12 of the bill of complaint, or that deductions are allowed thereby to some persons engaged in that occupation and not to others. On the contrary they allege that a law imposing a tax upon such occupation which failed to permit those deductions, although uniform within the meaning of constitutional provisions, would bear unevenly and unequally upon persons whose circumstances, conditions and surroundings differ as alleged in said paragraph. Defendants allege that the deductions provided for in said law are of general and uniform application and the circumstances

d surroundings to which persons engaged in such occupation are bject will not operate to make the burden of the tax unequal, but hereinbefore alleged the allowance of such deductions will tend to ualize the tax by taking into account such circumstances and nditions.

XIII.

Defendants deny that said law imposes an income tax upon those gaged in mining ore, as alleged in paragraph 13 of the bill of mplaint.

XIV.

Defendants deny that said law is unauthorized or is prohibited by e constitution of the state of Minnesota, upon any of the grounds t forth in paragraph 14 of the bill of complaint.

XV.

Defendants deny all of the allegations of paragraph 15 of the bill of complaint, except in so far as it is alleged in said aragraph that the taxes levied under said law are to be distributed the general revenue fund of the state.

XVI.

Defendants deny all of the allegations of paragraph 16 of the bill f complaint, except in this: They admit on information and belief hat the royalties payable under mining leases vary in respect to different mines; they allege that such royalties vary not only because f the date or period of their execution, but because of the quality nd quantity of the ore in or upon the property so leased, and said oyalties vary because of the nature of the operation, whether open it or underground mining, necessary to extract ore from the property leased; they admit that no two miners will extract their ore at xactly the same cost per ton; they admit that no two mining properies will be subject to exactly the same ad valorem taxes; and they dmit that plaintiffs will not each be required to pay, under this law, xactly the same number of dollars and cents, but that the amount of heir taxes, in dollars and cents, will vary in direct relation to the magnitude or extent of their mining operations.

XVII.

Defendants deny all of the allegations of paragraph 17 of the bill of complaint.

XVIII.

Defendants admit that they are threatening to enforce said law according to its terms and provisions; they deny all other allegations of paragraph 18 of the bill of complaint.

Having thus made a full answer to all the matters and things contained in the bill, the defendants pray that the bill be
326 dismissed and for judgment for their costs in this behalf incurred.

CLIFFORD L. HILTON,
Attorney General;
EGBERT S. OAKLEY,
Deputy Attorney General;
MONTREVILLE J. BROUN,
Assistant Attorney General,
Solicitors for Defendants.

102 State Capitol, St. Paul, Minnesota.

327 STATE OF MINNESOTA,
County of Ramsey, ss:

Samuel Lord, being first duly sworn, says that he is one of the defendants named in the bill of complaint herein; that he has read the foregoing answer and knows the contents thereof and that the same is true of his own knowledge, except as to matters therein stated upon information and belief, and as to those matters he believes it to be true.

SAMUEL LORD.

Subscribed and sworn to before me February 18, 1922.
[SEAL.] (G. K. SPANGENBERG,)
Notary Public, Ramsey County, Minnesota.

My commission expires Mar. 11, 1922.

Endorsed: Filed February 20, 1922. Joel M. Dickey, Clerk, by J. C. Herman Engel, Deputy.

That on the 24th day of January, A. D. 1922, came the plaintiffs Republic Iron & Steel Company, The Shenango Furnace Company, Rogers-Brown Ore Company, Balkan Mining Company, Sagamore Iron Company and Pitt Iron Mining Company, by their attorneys, and filed in the office of the Clerk of this Court, their bill of complaint, which is in words and figures following, to wit:

328 United States District Court, District of Minnesota, Fifth Division.

REPUBLIC IRON & STEEL COMPANY, THE SHENANGO FURNACE COMpany, Rogers-Brown Iron Company, Balkan Mining Company, Sagamore Iron Company, and Pitt Iron Mining Company, Plaintiffs,

vs.

SAMUEL LORD, J. G. ARMSON, and ODIN HALDEN, Constituting the Minnesota Tax Commission; Clifford L. Hilton, Attorney General of Minnesota; R. P. Chase, State Auditor of Minnesota, and Henry Rines, Treasurer of Minnesota, Defendants.

Bill of Complaint.

Plaintiffs, for a cause of action against the defendants, allege and show to the Court as follows:

1. That the Republic Iron & Steel Company is a corporation created, organized and existing under the laws of the State of New Jersey; that The Shenango Furnace Company is a corporation created, organized and existing under the laws of the State of Pennsylvania; that Rogers-Brown Iron Company is a corporation created, organized and existing under the laws of the State of New York; that Balkan Mining Company is a corporation created, organized and existing under the laws of the State of Ohio; that Sagamore Iron Company is a corporation created, organized and existing under the laws of the State of Delaware; and that Pitt Iron Mining Company is a corporation created, organized and existing under the laws of the State of West Virginia, and each of said corporations are qualified as foreign corporations in the State of Minnesota, and authorized to do business in said State, and each of said plaintiffs is the owner and holder of long term mining leases, extending for upwards of twenty years, upon various iron mines on the Mesaba Range in the State of Minnesota. That the Re-
329 public Iron & Steel Company is the owner in fee of a part of the Kinney Mine, located upon said Iron Range in said State, and each of said Companies is and for years past has been and will for many years to come be engaged in the business of mining and producing iron ore from said mines, and each of said Companies is, on account of their holdings, obliged to pay and does pay ad valorem taxes upon said properties in said State.

2. That the defendants Samuel Lord, J. G. Armson and Odin Halden constitute the Minnesota Tax Commission, which Commission is created under the laws of the State of Minnesota. That said Odin Halden is a resident and citizen of the County of St. Louis, State of Minnesota; that said Samuel Lord is a resident and citizen of Dodge County, Minnesota, and said J. G. Armson is a resident and citizen of Washington County, Minnesota. That defendant

Clifford L. Hilton is Attorney General of the State of Minnesota and a resident and citizen thereof, defendant R. P. Chase is Auditor of the State of Minnesota and a resident and citizen thereof, and defendant Henry Rines is Treasurer of the State of Minnesota and a resident and citizen thereof.

3. That at the 1921 session thereof, the legislature of the State of Minnesota passed Chapter 223 of the Session Laws of 1921 of said State, a copy of which is on page 6 of Exhibit A, hereto attached.

4. That pursuant to said statute the defendants Samuel Lord, J. G. Armson and Odin Halden have sent blanks to each of the above named plaintiffs, copy of which, marked "Exhibit A" is hereto attached, except that in the blanks so sent to these respective plaintiffs there was filled in on the face thereof and on the second page thereof the names of these respective plaintiffs, with the
330 name and description of each particular mine, a separate blank being sent to each of the said plaintiffs for each mine owned or controlled by them respectively, and the said defendants, pursuant to said Chapter 223 of the Laws of 1921, have demanded that these plaintiffs fill in and verify the information called for in said blanks and file such verified information with said Minnesota Tax Commission on or before February 1st, 1922, and have demanded that these plaintiffs furnish such information, including the most minute and private details as to the cost of mining, selling price and analysis of the ore mined and produced by them, their expenses of operation and administration, the amount of state and federal taxes paid by them, commissions paid, royalties paid, original costs of development, etc., much of which it is very difficult and some of which it would be practically impossible for these plaintiffs to furnish and some of which information is not in the possession of these plaintiffs, but if it exists at all, would be in the possession of the predecessors of these plaintiffs in the ownership and control of their respective properties.

5. That the defendants Samuel Lord, J. G. Armson and Odin Halden are threatening to levy taxes against each of the above named plaintiffs and to assess penalties against them, and to certify the amounts of such taxes and penalties to the defendant R. P. Chase, State Auditor, and said defendant R. P. Chase is threatening to make his draft upon each of said plaintiffs for the amount of taxes and penalties thus certified and to place the same in the hands of Henry Rines, State Treasurer for collection, and the defendant Henry Rines is threatening to deliver such drafts to the defendant Clifford L. Hilton as Attorney General, and the defendant
331 Clifford L. Hilton is threatening to bring actions thereon against these plaintiffs, all pursuant to the provisions of said Chapter 223 of the Laws of 1921, and, upon information and belief, the plaintiffs allege that the said defendants propose to make said assessments and issue said drafts and bring said suits against these plaintiffs with reference to each particular mine which the plaintiffs

own or operate and to cause a multiplicity of vexatious suits against each one of these plaintiffs, as each one of the plaintiffs except the Rogers-Brown Iron Company operates several mines and said Rogers-Brown Iron Company operates one such mine, and the said defendants are so threatening to and will, unless restrained by this Court, do all of said acts and the other acts required by said Chapter 223, and so interfere with the property and rights and privileges of these plaintiffs unless restrained by the Court.

6. Plaintiffs further allege that the amount of taxes which said defendants threaten to levy and collect against each of the plaintiffs for the year 1921 is upwards of $3,000.00, exclusive of interest, penalties and costs, and the amount of taxes which said defendants will attempt to levy against each of the plaintiffs for each of many successive years will be upwards of $3,000.00, exclusive of interest, penalties and costs, and that the amount of taxes for which each of the plaintiffs Balkan Mining Company and Pitt Iron Mining Company is liable for the year 1921, if said law is valid, is upwards of $3,000.00, exclusive of interest, penalties or costs.

7. Plaintiffs allege that the defendants constituting said Minnesota Tax Commission have sent these respective plaintiffs the above mentioned blanks and have demanded that they fill them out with reference to each separate mine, and upon information and belief allege that it is the intention of the defendants herein under said law to levy and assess taxes against these plaintiffs with ref-
332 erence to each particular mine in any case where the computations made by said defendants under said law would show a profit upon that particular mine, and to make no allowance to the said respective plaintiffs as against such a tax for instances where there are other mines which are or may be owned by the plaintiffs in which the computations would show a loss, and that the said defendants propose to make said assessments for each particular mine and cause drafts to be drawn for the amounts of such taxes on account thereof and bring separate suits on account of such respective drafts for said respective mines, and to bring suits each successive year against these plaintiffs accordingly, and to assess and collect penalties, and thus cause a multiplicity of suits. That said statute requires actions to be brought in the name of the State of Minnesota in the State Courts of Minnesota, either in Ramsey County or the county where the ore may be produced, and defendants are threatening such suits; that plaintiffs herein could not remove said actions to the federal court, inasmuch as the State is not a citizen within the meaning of the statutes giving a right of removal; that if plaintiffs should pay said tax they could not maintain a suit in the federal or state courts to recover it, without the consent of Minnesota, as a State cannot be sued without its consent, and no such consent has been given; that there is therefore no adequate remedy at law in the federal courts, and plaintiffs, having none such, are entitled to seek equitable relief in the federal court. That said statute further provides for a penalty of ten per cent for failure to file reports, ten per cent additional for failure to pay by June 1st, and one per cent for the month

of June, before even a suit could or would be brought, and one per cent per month thereafter, so that plaintiffs must face a
333 penalty of at least twenty-one per cent before any suit would be brought and in case they lost such suit would have to pay such penalty without having any day in court to determine the correctness of the amount of any tax, and without any right of review, even before the Tax Commission. That these plaintiffs, being foreign corporations, would, under the Minnesota statutes, be subject to having their mines attached for such tax, merely upon the ground that they are residents and citizens of other states, and thus subjected to a cloud upon the title to their properties.

8. Plaintiffs allege that said statute, Chapter 223 of the Laws of 1921, is unconstitutional and void as in violation of the Fourteenth Amendment of the Constitution of the United States, in that it attempts to abridge the privileges of these plaintiffs, citizens of the United States, in carrying on their legitimate business, by imposing a tax thereon, the tax so imposed being higher in proportion as the plaintiffs may conduct the business efficiently and economically, thus making them entitled to a less deduction in the computation of said tax from the value of the ore at the surface of the mine than in the case of others who may conduct their business in a careless and negligent manner and at a higher cost, and further that the said statute is an attempt to and does deprive these plaintiffs of their property without due process of law and denies to these plaintiffs the equal protection of the laws, amongst other things in the following particulars:

(*a*) That said statute provides for the levy and assessment of a tax against these plaintiffs without any opportunity on the part of the plaintiffs to have their day in court or contest or dispute the amount of such tax to be levied, as said statute makes the
334 levying of a tax under said law by the defendants constituting the Minnesota Tax Commission final and conclusive, and after the tax has been so levied and drafts drawn by the defendant Auditor and by him turned over to the Treasurer and by him to the Attorney General, requires the Attorney General to bring action on and for the amount of such draft, and there is no opportunity provided for the plaintiffs to defend against the amount of the tax, and no appeal or other procedure is provided by which the defendants may have their day in court to contest the amount of the tax so levied.

(*b*) That said statute delegates to the said Minnesota Tax Commission legislative powers in determining the amount of the tax and makes the determination of the said Minnesota Tax Commission conclusive, (1) as to the value of ore, (2) as to the number of tons uncovered in each open pit mine, (3) as to the number of tons that can be advantageously taken out through each shaft or drift in an underground mine, and (4) in fact as to all the subtractions which are to be made from the value of the ore in determining the taxable value.

(c) That said statute further allows a deduction, under the 5th aragraph of Section 2 of said Act, of a percentage of the ad valorem axes levied for said year against the realty in which the ore is de-osited, equal to the percentage that the tons mined or produced dur-ng such year bears to the total tonnage in the mine, whereas, the axes levied against the realty in which the ore is deposited bear no ecessary or proper relation to the taxes levied against the ore alone r the value thereof, since under the statutes of Minnesota the ad alorem taxes on realty include the value of the surface and build-
ings thereon, as well as the ore, and further because the ad
335 valorem taxes on real estate vary greatly in rates in the dif-
ferent localities where the mines on the Mesaba Range are situated, sometimes as much as two or three hundred per cent, so hat this deduction is two or three times as much in one instance as n another.

(d) That said statute imposes a greater tax on efficient and eco-nomical operation, by allowing a greater deduction where the cost of operation is greater, and protects the improvident and wasteful op-erator against the provident and skilful operator, and denies to these plaintiffs the equal protection of the law in conducting their opera-tions efficiently and economically.

(e) That said statute imposes a greater tax on the operator who operates his own property than on the operator who leases from the owner and pays a royalty to the owner, and therefore imposes a pen-alty upon a citizen and operator who attempts to operate his own property, and likewise imposes a greater tax upon the operator who holds low royalty leases, acquired many years ago, as in the case of these plaintiffs, than upon an operator who holds leases upon similar property upon which higher royalties are paid.

(f) The said statute likewise exempts from taxation under it the lessee who has sub-leased his property at an advanced royalty or rental, while imposing such a tax against a lessee who undertakes to operate his property under a direct lease, as is the case with these plaintiffs.

(g) That said statute provides for deductions from the value of the ore at the surface of the earth of the cost of opening the mine, which deduction varies greatly according to whether the mine may
have been opened many years ago, when costs were low, or
336 whether such mine has been opened in more recent years, and
particularly during war times, when costs were high.

(h) The said statute further fails to make any provision in terms for deductions or computation of interest on investments made many years ago, but flatly bases said deductions upon the cost of opening up and developement, regardless of when the same took place, and thereby makes the tax not uniform and unequal as between operators, according to the time that they have developed their property.

(i) The said statute provides for deductions in case of a lessee ac-cording to the cost of opening up the property, divided by the num-

ber of tons which can be mined by such development, regardless of whether the lessee will be able to get out, during the life of his lease, all the ore covered by such computation, and allows no consideration in that regard to a lessee who may have spent enormous amounts of money in opening up a property under a lease, where he will not be able to derive the full benefits thereof because of the expiration of his lease before the ore developed is all mined out.

(*j*) That the number of tons in certain mines is not ascertainable with exactness, and often, in the actual mining out of such properties, it is found that the number of tons that can be obtained therefrom is more or less than the estimates thereof and it is difficult for the Minnesota Tax Commission or any other body to estimate with any degree of exactness the number of tons which may be developed therefrom.

(*k*) That the value of ore varies greatly during a given year, and the said statute leaves it to the Minnesota Tax Commission arbitrarily to determine the time as of which such value may be reckoned.

337 (*l*) The said statute attempts to impose a garbled income tax on the plaintiffs and those engaged in mining, while imposing no tax on the income of any other persons or parties, nor do the statutes of the State of Minnesota impose any tax upon the income of any other persons or parties, except as this statute provides for such tax upon those engaged in mining.

(*m*) The said statute makes an improper and illegal classification for taxation, by singling out the single industry of mining ore and not attempting to tax others engaged in other sorts of mining or quarrying or any other industries, and so does not afford those engaged in mining ore, as are these plaintiffs, the equal protection of the law.

9. The plaintiffs further allege that said statute is a violation of Section 8 of Article I of the Constitution of the United States, in that it undertakes to provide for the interference with and placing of a burden upon interstate commerce. That all these plaintiffs are, as above alleged, corporations foreign to the State of Minnesota, and all the iron ore that they handle is shipped by them to lower lake ports and into other States than Minnesota; that as a rule said ore is placed in railroad cars of common carriers at the place where the same is brought to the surface of the earth, and is so placed in such railroad cars for shipment on its interstate journey to lower lake ports and the respective States where the plaintiffs herein are incorporated, as above stated. That under said situation defendant members of said Tax Commission propose and are threatening to base said tax upon the selling price or value of said ore at lower lake ports, deducting therefrom the cost of handling the same in interstate commerce, and as a result, making the said tax higher proportionately as efficiency and economy is used in the handling of the same in inter-
338 state commerce. That under said statute, furthermore, it is required that all books, waybills, inventories, correspondence

and memoranda relating to or used in the transaction of the business of these plaintiffs shall, on demand of the defendants composing said Tax Commission, be open to inspection and examination of said defendants, and said statute makes it a gross misdemeanor on the part of anyone having charge, control or possession of such documents to neglect or refuse said Tax Commission access thereto, and said defendants members of said Tax Commission are demanding of these plaintiffs the information contained in said waybills, memoranda, correspondence of these plaintiffs, including information from the books of these plaintiffs as to the costs, development and operation of said properties, washing and drying the ore long after it has reached the surface of the ground, the transportation charges paid by these plaintiffs for rail freight, vessel freight, marine insurance, cargo analyses, vessel unloading, shrinking during transportation, and general tax on rail and vessel freight, all of which items are disbursements incurred with reference to said property in interstate commerce, and are also demanding from these plaintiffs statements of the amount of federal taxes paid by the plaintiffs, which include taxes upon income accruing from the interstate business of these plaintiffs, the said plaintiffs each being engaged in interstate business, all of which is in interference with and a burden upon interstate commerce, and particularly the interstate business of these plaintiffs, and all of which is likewise in violation of the Fourteenth Amendment to the United States Constitution.

10. Plaintiffs further allege that said Chapter 223 of the Laws of 1921 of Minnesota is a violation of the Constitution of the State of Minnesota, and particularly of Section 1 of Article 9
339 thereof, which requires that "taxes shall be uniform on the same class of subjects," and the plaintiffs allege that the said statute violates the Constitution of the State of Minnesota and particularly said Article 9 in all of the particulars with reference to uniformity and inequality and denial of equal protection of the laws, hereinbefore set forth as matters wherein it violates the Constitution of the United States, and particularly with reference to deductions for the cost of development and operation, payment of ad valorem taxes, the payment of royalties, and the inequalities with reference to the time of development of the properties and the cost thereof and interest thereon.

11. Plaintiffs further allege that the said statute violates the Constitution of the State of Minnesota, and particularly Section 1 of Article 9 thereof, in that it adopts an improper classification of the subjects for taxation and attempts to single out for taxation only those engaged in mining ore, while the Constitution of the State of Minnesota provides for and permits the taxation of property only, and said Article 9 provides, in substance, that taxes shall be uniform upon the same class of subjects and that they shall have a cash valuation except that it provides that the legislature may authorize municipal corporations to levy assessments for local improvements upon property benefited, without regard to such cash valuation, the

only other exception being that said Constitution permits the taxation of gross earnings of railroads. That said act further violates said Constitution of Minnesota in that it attempts to impose a tax on mining of ore, which is a right and privilege of these plaintiffs in the ownership of their property and which right is a natural
340 attribute of and incident to the ownership of property. Said statute imposes such tax on the mining of ore, regardless of whether said ore may be sold or removed from the property or whether it may be used thereon by the owner for his own purposes, or whether, when once mined, it may be stockpiled and allowed to so remain for years on the owner's property. Said statute was not intended to and does not impose a tax upon those engaged by contract in stripping or developing mines or extracting ore from mines, who by such contract work may be deriving far greater profits than the owners, and so exempts those actually engaged in the occupation of mining, or, if it should be held to apply to them, imposes a tax measured by the value of the ore, with the ownership of which such parties operating on contract are not concerned.

12. Plaintiffs further allege that said statute is not only an unconstitutional and invalid classification of the subjects of taxation, but does not operate uniformly upon those in the class designated—that is, those engaged in the occupation of mining ore—in that in imposing said tax it allows certain deductions to certain of those engaged in that business, for royalty paid, which it does not allow to others engaged in the same business, and allows a greater deduction in figuring said tax for royalty to some engaged in the business than it does to others, and allow a greater deduction for ad valorem taxes and cost of development and operation to some than it does to others, and allows a deduction for the cost of development regardless of the time when the same took place or the interest on the investment, and so does not operate uniformly upon all those engaged in the business, and particularly, it imposes a tax at a higher rate upon an owner operating his own property or a lessee holding a low royalty
341 lease than it does upon those who do not operate their own property or who hold leases of the same kind of property at a higher royalty rate.

13. That in truth and in fact said Chapter 223 of the Laws of 1921 is an attempt to impose a garbled income tax upon the income of those engaged in mining ore and does not impose an income tax upon any other class of income and there is no other class of income taxed in any manner under the statutes of the State of Minnesota. That in truth and in fact the said law was intended to and does in effect impose a tax upon income derived from mining ore, and that the real intent and purpose of the legislature in passing said law was to impose such a tax, and in said statute it used the words "an occupation tax equal to six per cent of the valuation of all ores" as a mere scheme or device in attempting to avoid a direct income tax, or else it intended to impose a tax as set out in the next paragraph hereof, and that the Constitution of the State of Minnesota does not permit and prevents the imposition of any income tax.

14. That in the discussion of said bill in the legislature the same was often and commonly referred to as a "tonnage tax" and was the result of many years of agitation for passage of a tonnage tax by the legislature of Minnesota, and the said statute is an attempt on the part of the state legislature to impose in effect a tax of six per cent upon the value of all ore mined or shipped by these plaintiffs as it exists in the ground, and is an attempt to evade the imposition of a direct tax for that purpose by the mere interposition of the words "an occupation tax equal to six per cent of the valuation", and that such direct or tonnage tax is unauthorized and is prohibited by the Constitution of the State of Minnesota and said statute violates
342 the same in that respect. That the said legislature also, by Chapter 337 of the Laws of 1921, appropriated ten thousand dollars for the administration and enforcement of said Chapter 223 of the Laws of 1921, and the defendants herein are threatening to expend said sum, or a large part thereof, in harrassing these plaintiffs and others similarly situated, in attempting to collect taxes thereunder. That the Minnesota Tax Commission, in its 1920 report to the legislature, which report is provided for by Minnesota statutes, estimated that the tax to be produced for the State by such a statute, on a six per cent net profits tax, considering the annual mining and shipments from Minnesota at 35,000,000 tons, which is about the average, would run from about two million dollars to upwards of three million dollars.

15. That under Section 14 of said act all the taxes imposed and collected thereunder are to be paid into the State treasury for the benefit of the general revenue fund, and that said provision is, under said act, unconstitutional and void under the Constitution of Minnesota, in that it is an attempt on the part of the State in effect to single out one species of property for taxation for the support of the State, while imposing no similar tax upon any other species of property within the State. That in the agitation for the passage of said statute it was a common argument and statement of those in the legislature and elsewhere in favor thereof that iron ore was a natural heritage which should belong to the State, and that therefore a tax should be imposed upon it, to the exclusion of similar taxes upon other property, for the benefit of the State, and that said statute is a result of the general and continued agitation for the imposition of such a tax for the benefit of the State, in so singling out
343 the one species of property belonging to these plaintiffs and others similarly situated, for the imposition thereof, in an attempt to frame a law which would in a large measure confiscate the property of these plaintiffs and others on the Iron Range, and with the expectation and understanding, as these plaintiffs are informed and believe, that if a law of such a nature could be passed and sustained in the courts, that the rates thereunder would thereafter be very much increased by amendment to such law. That the framers of said law therefore attempted by subterfuge to impose such tax upon the valuation of iron ore, to the exclusion of other classes of property, merely by naming and calling it an "occupation tax" and, instead of taxing the iron ore directly, levying a tax on the

occupation, measured by the value of the ore, and that in these respects the statute violates not only the Constitution of the State of Minnesota, but also the Fourteenth Amendment to the Constitution of the United States, in denying to these plaintiffs and others similarly situated the equal protection of the laws.

16. These plaintiffs further allege that as to a part of the Kinney Mine the Republic Iron & Steel Company, as above stated, is the owner of the fee thereof, and that as to the balance of the respective properties controlled or operated by these plaintiffs, during the year 1921 and now, they hold them upon leases made many years ago and which in general carry low royalties, and that therefore the tax attempted to be imposed upon these plaintiffs by said statute is higher than upon those who now hold similar properties, usually more recently acquired, and which carry higher royalties. That these plaintiffs each and all have pursued and are now pursuing economical and efficient methods of development and operation, and are by said statute, on account thereof, attempted to be taxed
344 at a higher rate than others who pursued less economical and efficient methods of developing and operating. That in general the properties of these plaintiffs have been developed for many years, at a time when the costs thereof were low as compared with later years, and therefore said statute imposes a higher tax upon these plaintiffs than upon others who have similar properties developed at a higher cost, because the said statute allows these plaintiffs a less deduction in figuring the basis of said tax. That the plaintiff Shenango Furnace Company has at least one property which has been developed and operated at a loss, and, as plaintiffs are informed and believe, said defendants propose not to take into consideration or allow any deduction on account thereof as against any profit that may have accrued to said Company in the operation of other properties. That said plaintiffs, or some of them, have less federal taxes than others engaged in the operation of like mines, and on account thereof, the tax which is attempted to be imposed upon said plaintiffs under said statute is increased, as it allows said plaintiffs less deduction than others in figuring the tax thereunder. That the deduction allowed by said statute on account of taxes paid on the real estate from which the ore in question may be mined operates unequally between these plaintiffs and other parties, as amongst themselves and also as compared with others, because in some cases the deductions would be comparatively high and in others comparatively low, according to the municipalities in which the particular properties may be situated.

17. That while there is no method whatsoever provided in said statute for giving these plaintiffs their day in court as to the amount of the tax and the propriety thereof, yet the said statute provides that even before the Attorney General shall have the right to bring
345 suit for the amount of the draft noted in such statute, there shall attach a penalty of ten per cent of the amount of the tax for failure to file a report and an additional ten per cent for failure to pay before the first day of June, and an additional one

per cent for the month of June and an additional one per cent per month for such time as may elapse until the Attorney General might choose to bring such suit, which might be for a period of six years, before the same would be outlawed.

18. That the said defendants herein are threatening arbitrarily and unlawfully to levy taxes and penalties against these plaintiffs pursuant to said statute, and to bring a multiplicity of suits against these plaintiffs, and are now demanding the information from the records, books and papers, and the plaintiffs are facing, for their officers and representatives, a possible indictment or charge for gross misdemeanor if they refuse to furnish the same under said statute, and that the plaintiffs have no adequate remedy at law.

Wherefore, plaintiffs pray for judgment as follows:

1. That the defendants be enjoined and restrained from levying any tax, or taking any further procedure, or undertaking to levy any penalties upon such a tax, and from taking any action to interfere with or harrass these plaintiffs, or their agents or servants or representatives, with reference to disclosing or furnishing information to the said defendants composing the Minnesota Tax Commission, and enjoining and restraining the said defendants from the taking any further procedure as against these plaintiffs pursuant to the terms of said statute, and for a restraining order upon the filing of this complaint and a temporary injunction during the pendency of this action as against said matters.

346 2. That the said statute, Chapter 223 of the Laws of 1921 of the State of Minnesota, be declared invalid, and the defendants perpetually enjoined from taking any action whatsoever with reference thereto and against these plaintiffs, and from levying any tax against the plaintiffs or attempting to create any cloud upon the title to any of the plaintiffs' property under and by virtue of said statute.

3. For such other and further relief as to the Court may seem just and proper.

W. D. BAILEY,
A. C. GILLETTE,
Solicitors for Plaintiffs.

1200 Alworth Building, Duluth, Minnesota.

WASHBURN, BAILEY & MITCHELL,
Of Counsel.

347–353 STATE OF MINNESOTA,
County of St. Louis, ss:

John A. Savage, being first duly sworn, says: that he is an officer, to-wit: President of Sagamore Iron Company, one of the plaintiffs in the above entitled action; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to such matters he believes it to be true.

JOHN A. SAVAGE.

Subscribed and sworn to before me this 24th day of January, 1922.
[SEAL.] EDITH SUNDHOLM,
Notary Public, St. Louis County, Minnesota.

My Commission expires July 20, 1924.

354 Endorsed: Filed January 24, 1922. Joel M. Mickey, Clerk, by E. Catherine Neff, Deputy.

That on the 13th day of February and 24th day of April, A. D. 1922, there was filed in the office of the Clerk of this Court stipulations that Mahoning Ore & Steel Company and International Harvester Company be added as plaintiff in this action, which stipulations are in words and figures following, to-wit:

355 United States District Court, District of Minnesota, Fifth Division.

REPUBLIC IRON & STEEL COMPANY et al., Plaintiffs,

vs.

SAMUEL LORD, J. G. ARMSON, et al., Defendants.

It is stipulated between the plaintiffs and the defendants in the above entitled action that Mahoning Ore & Steel Company, a Pennsylvania corporation, may be added on in all the proceedings herein, as plaintiff in said action, with the same effect as though originally included in said proceedings.

Dated January 26th, 1922.

WASHBURN, BAILEY & MITCHELL,
Attorneys for Plaintiffs and for Mahoning Ore & Steel Company.
CLIFFORD L. HILTON,
EGBERT S. OAKLEY,
Attorneys for Defendants.

Filed February 13, 1922.

JOEL M. DICKEY,
Clerk,
By J. C. HERMAN ENGEL,
Deputy Clerk.

356 United States District Court, District of Minnesota, Fifth Division.

REPUBLIC IRON & STEEL COMPANY et al., Plaintiffs,

vs.

SAMUEL LORD, J. G. ARMSON, et al., Defendants.

It is stipulated between the plaintiffs and defendants in the above entitled action that International Harvester Company, a New Jersey corporation, may be added herein as a plaintiff in this action, and the allegations of the complaint and answer herein shall be deemed to apply to said company as a plaintiff, and all proceedings herein taken to date shall be deemed to apply to said company, with the same effect as though said company originally had been included as a plaintiff in said action.

WASHBURN, BAILEY & MITCHELL,
Attorneys for Plaintiffs.
CLIFFORD L. HILTON,
EGBERT S. OAKLEY,
Attorneys for Defendants.

Filed April 24, 1922.

JOEL M. DICKEY,
Clerk,
By MARGARET L. MULLANE,
Deputy.

That on the 20th day of February A. D. 1922, there was filed in the office of the Clerk of this Court the Answer of the defendants to the Bill of Complaint, Republic Iron & Steel Co., et al., which is in words and figures following, to-wit:

357 United States District Court, District of Minnesota, Fifth Division.

In Equity.

REPUBLIC IRON & STEEL COMPANY, THE SHENANGO FURNACE COMPANY, Rogers-Brown Iron Company, Balkan Mining Company, Sagamore Iron Company, Pitt Iron Mining Company, and Mahoning Ore & Steel Company, Plaintiffs,

vs.

SAMUEL LORD, J. G. ARMSON, and ODIN HALDEN, Constituting the Minnesota Tax Commission; Clifford L. Hilton, Attorney General of Minnesota; R. P. Chase, State Auditor, and Henry Rines, Treasurer of Minnesota, Defendants.

Answer to Bill of Complaint.

The above named defendants for their joint and several answers to the bill of complaint of complainants in the above entitled cause, respectfully represent and state to the court as follows:

I.

Defendants admit that each of the plaintiffs is a corporation as alleged in paragraph 1 of said bill of complaint. They believe, although without knowledge or information thereof, that each of said plaintiffs, except said Republic Iron & Steel Company, is the owner of mining leases upon iron mines on the Mesaba range in the state of Minnesota. They admit that said Republic Iron & Steel Company owns a mine which is known as part of the Kinney mine. Defendants deny that any law or statute compels said plaintiffs (except said Republic Iron & Steel Company) to pay an ad valorem tax
358 upon said properties and they allege that if said plaintiffs (except said Republic Iron & Steel Company) have paid or shall pay an ad valorem tax upon their said leaseholds, the obligation to do so has been assumed by them under the terms of their respective leases. They admit that said Republic Iron & Steel Company is required to pay an ad valorem tax upon its said iron mine.

II.

Defendants admit all of the allegations of paragraph 2 of the bill of complaint.

III.

Defendants admit all of the allegations of paragraph 3 of the bill of complaint.

IV.

Defendants admit all of the allegations of paragraph 4 of the bill of complaint, except in so far as it is asserted in said paragraph that it will be difficult or impossible to supply the information called for by the Minnesota Tax Commission, which allegation is denied.

V.

Defendants admit the allegations of paragraph 5 of the bill of complaint, except in so far as it is alleged in said paragraph that it is proposed to make assessments, issue drafts, and bring suits against plaintiffs in respect to each particular mine owned or operated by plaintiffs, which allegations are denied.

VI.

Defendants admit all of the allegations of paragraph 6 of the bill of complaint.

VII.

Defendants deny that they intend, or propose, or have threatened to bring separate suits against plaintiffs on account of each of
359 their respective mines, and they allege that chapter 223, Laws 1921, contemplates but a single suit against each of said plaintiffs to recover taxes assessed against them thereunder, and they allege that defendant Clifford L. Hilton, as attorney general, will commence and prosecute against said plaintiffs, respectively, if they shall fail to pay such taxes, only the single suit provided for in said law.

Defendants deny that plaintiffs, or any of them, are without an adequate remedy at law in either the state or the federal courts.

Defendants allege that said law provides for a penalty of ten per cent of the amount of the tax assessed only in the event that plaintiffs shall fail to make a report of the ore produced or mined by them and its value; they allege that for failure to pay said tax by June 1, a ten per cent penalty is assessed under said law, and that thereafter one per cent thereof is added each month to said tax until the same shall be paid, unless, in the suit provided for in such law, the court shall determine that such tax was illegally or excessively assessed, without fault of plaintiffs, in which event no penalty in any amount may be recovered.

Defendants admit all other allegations of paragraph 7 of the bill of complaint.

VIII.

Defendants deny that said chapter 223, Laws 1921, is unconstitutional upon any of the grounds set forth in paragraph 8 of said bill of complaint, and allege in respect to each subdivision of said paragraph, as follows:

(*a*) They allege that the tax assessed under the terms of said law may be collected, only, in an ordinary civil action for the recovery of money, in which action the person assessed may contest the right of the state to assess such tax and the amount thereof and he
360 may assert without restriction any defense which he may have in respect to such tax or any part thereof. Upon the trial of such suit there will be no conclusive presumption of any kind and the findings and decisions of the tax commission and the drafts of the auditor furnish only prima facie evidence of the validity of the assessment and of the correctness of the amount of the tax.

(*b*) Defendants deny that legislative power is delegated to the Minnesota Tax Commission by said law or that the determinations or findings of that commission are conclusive as to any of the matters set forth in subdivision (*b*) of paragraph 8 of said bill of complaint.

(*c*) Defendants allege on information and belief that each of the leases under which plaintiffs, respectively, carry on their mining business requires the lessee to pay all taxes assessed against the property so leased, and they further allege that said law, in authorizing persons engaged in the mining business to deduct from the valuation of each ton of ore mined each ton's proportion of ad valorem taxes paid by them, tends to equalize the burden of the tax provided for in said law, particularly in respect to adjusting the same as between open pit and underground mines. That mining or producing ore from an underground mine is widely different from mining or producing ore from an open pit mine. The ore in underground mines lies at a considerable depth below the surface of the earth; shafts are sunk to the ore bodies; tunnels or drifts are driven at different levels into the ore bodies and the ore thus reached is separated and brought to the mouth of the shaft by manual labor. The amount of ore which may be extracted from an underground mine in a given time is restricted by the limitations of space and openings thus imposed. The ore in open pit mines lies near the surface of the earth; the over burden of the ore is stripped off
361 the ore bodies and thereafter the operation is simply one of separating the ore by means of steam shovels and loading it into cars brought into the pit of the mines as hereinafter described. The cost of producing a ton of ore from an underground mine greatly exceeds the cost of procuring a ton of ore of like quality from an open pit mine.

(*d*) Defendants deny that said law imposes any different tax on efficient operators than upon inefficient operators, or that it protects the wasteful or improvident operator; they deny that mine operators will be either more or less efficient or wasteful on account of the imposition of such tax; on the contrary they allege that each person or corporation will mine his ore as economically as possible. They allege that said law operates, in this respect, to equalize, as far as possible, the tax on this occupation or business, so far as the special circumstances and conditions surrounding the persons, firms or corporations engaged in such occupation may be practically foreseeable,

(*e*) Defendants deny that said law imposes a greater tax on the operator who owns his own property than on one who leases his property and pays a royalty to the owner, or that it imposes a greater tax upon the operator who pays a lower royalty than another. They admit that such royalties as are actually paid according to the circumstances of the different operators and the condition of their respective properties are deductible. But they allege that if the law failed to permit such deductions, it would bear unequally upon the different persons engaged in the occupation or business of mining, particularly since the royalties to be paid will vary in respect to the value of the ore in its natural bed and its value therein will be greatly affected by the kind of mining operation necessary to extract it, since a higher royalty will be paid for the right to mine
362 ore of a given quality if it can be mined by open-pit methods than would be paid if it could be mined by underground mining methods.

(*f*) Defendants deny that said law exempts a lessee who subleases his property, or that it creates any other exemption. The tax is assessed only upon those engaged in the business or occupation of mining, and it does not apply to persons, whether lessees who assign their leases, or otherwise, who are not engaged in the business of mining.

(*g*) Defendants admit the allegations of subdivision (*g*) of paragraph 8 of the bill of complaint. Furthermore, they allege that the cost of opening one mine may and will vary from the cost of opening another mine, regardless of the period in which any such mine may be opened. They allege that the law does not lack uniformity of operation because of such differences in the circumstances of those engaged in the occupation of mining, or that on that account uniformity would have been promoted by refusing to permit any deduction for such cost or in permitting an arbitrary deduction, without reference to the actual cost of opening the mine.

(*h*) Defendants admit that said law fails to permit deductions on account of interest on investments, as alleged in subdivision (*h*) of paragraph 8 of the bill of complaint. They allege that it was not the intent or purpose of the legislature to permit miners to deduct all of the costs of carrying on their business, but that it was the intention of the legislature to permit such deductions as in a practical and substantial way tended to equalize the burden of their occupation tax by allowing such deductions as would equalize the difference between open-pit mining operations and underground mining operations as aforesaid. They further allege that the amount of interest upon such investments, when apportioned to each ton of ore mined, would be infinitesimal and would have an insignificant effect upon the amount of taxes to be collected
363 under said law.

(*i*) Defendants admit the allegations of subdivision (*i*) of paragraph 8 of the bill of complaint. They allege, however, upon information and belief, that mining leases usually run for a period of

fifty years, and they allege on information and belief that the leases of plaintiffs, respectively, are fifty-year leases, and that all of the ore in their said mines can be extracted therefrom during the terms of such leases.

(*j*) Defendants admit the allegations of subdivision (*j*) of paragraph 8 of the bill of complaint.

(*k*) Defendants admit that the value of ore may vary during a given year, but they deny that the tax commission is given any arbitrary power or authority to determine the time for which such values may be reckoned.

(*l*) Defendants deny the allegations of subdivision (*l*) of paragraph 8 of the bill of complaint.

(*m*) Defendants deny that said law makes an improper or illegal classification for taxation or deprives plaintiffs of the equal protection of the law as alleged in subdivision (*m*) of paragraph 8 of the bill of complaint. And they allege that there is no other business or occupation carried on in the state of Minnesota similar to that of mining ore.

IX.

Defendants deny that said law interferes with or imposes any burden upon interstate commerce, or that it violates section 8, article 1, of the constitution of the United States, or the fourteenth amendment thereto.

Defendants admit that all ore mined by plaintiffs is shipped by them into other states than Minnesota. They deny that the ore mined by plaintiffs is delivered to or transported by interstate carriers, except in the following manner:

The plaintiffs have constructed and own railway tracks
364 running through and upon their open pit mines; that said plaintiffs own railway engines operated by their own employes; that the carrier operating the lines over which plaintiffs' ore is to be shipped from said open pit mines, when called upon to do so by plaintiffs, sets out on its side tracks for use of plaintiffs such empty cars as plaintiffs may require; that thereupon plaintiffs, with their engines and through their employes, go upon the sidings of such carrier and take such empty cars into and upon such open pit mines, load such cars with ore, and thereafter deliver them at such railway side tracks to such carrier with directions as to their movement and destination.

That ore from underground mines is brought to the surface, through shafts, in "skips," so-called, to the shaft house. During a part of the year the ore is deposited in pockets at the shaft house for loading into railway cars. During the remainder of the year the ore is carried from the shaft house to a stock pile, there to await later loading into cars. That nearly 50% of the ore mined is so deposited in stock piles. The shaft house is reached by side tracks owned by carriers, which tracks lie directly beneath the pockets.

Plaintiffs call upon the carrier to furnish such cars as it may require and those cars are set out upon such side tracks and plaintiffs' employes move such cars, usually one or two at a time, beneath the ore pockets, load such cars, assemble them when loaded, and notify carrier of their readiness for movement, and the carrier then takes such shipment to destination. Ore in stock pile is loaded by plaintiffs by steam shovels into cars similarly assigned by the carrier, and moved, assembled, and delivered by plaintiffs in substantially the same manner as are cars loaded from pockets.

That "wash ore," so-called, is taken from the mine, whether the same be an open pit mine or an underground mine, by plaintiffs through their employes, and upon their own cars drawn by
365 their own locomotives, and is carried and transported over their own railway tracks to a washing plant or concentrating plant, distant from one to five miles from such mines; it is there beneficiated by plaintiffs, that is, washed free of sand and other foreign substances, and thereafter such beneficiated ore, commonly called concentrates, is shipped by plaintiffs to furnaces in their usual course of business.

Defendants deny that the tax commission proposes or threatens to base its calculations of the taxes to be imposed under said law upon any valuation of such ore other than its valuation at the place of bringing the same to the surface of the earth in the manner provided for in said law.

Defendants admit that the tax commission has demanded of plaintiffs the information described in said subdivision of paragraph 9 of the bill of complaint, but they deny that such demand imposes any burden on or interferes with interstate commerce.

X.

Defendants deny that said law violates section 1, article 9, of the constitution of the state of Minnesota, or that it violates the constitution of the United States, as alleged in paragraph 10 of the bill of complaint.

XI.

Defendants deny the allegations of Paragraph 11 of the bill of complaint, except in so far as it is alleged in said paragraph that said law does not impose a tax upon those engaged by contract in stripping mines, which said allegation is admitted. They allege that said law provides only for a tax upon persons or corporations engaged in the business of mining ore, and they deny that any person engaged in that business or occupation is exempt from such tax.

XII.

Defendants deny that said law will fail to operate uniformly upon those engaged in the occupation of mining ore in those par-
366 ticulars set forth in paragraph 12 of the bill of complaint, or that deductions are allowed thereby to some persons engaged

in that occupation and not to others. On the contrary they allege that a law imposing a tax upon such occupation which failed to permit those deductions, although uniform within the meaning of constitutional provisions, would bear unevenly and unequally upon persons whose circumstances, conditions and surroundings differ as alleged in said paragraph. Defendants allege that the deductions provided for in said law are of general and uniform application and the circumstances and surroundings to which persons engaged in such occupation are subject will not operate to make the burden of the tax unequal, but as hereinbefore alleged the allowance of such deductions will tend to equalize the tax by taking into account such circumstances and conditions.

XIII.

Defendants deny that said law imposes an income tax upon those engaged in mining ore, as alleged in paragraph 13 of the bill of complaint.

XIV.

Defendants deny that said law is unauthorized or is prohibited by the constitution of the state of Minnesota, upon any of the grounds set forth in paragraph 14 of the bill of complaint.

XV.

Defendants deny all of the allegations of paragraph 15 of the bill of complaint, except in so far as it is alleged in said paragraph that the taxes levied under said law are to be distributed to the general revenue fund of the state.

XVI.

Defendants deny all of the allegations of paragraph 16 of the bill of complaint, except in this: They admit on information and belief that the royalties payable under mining leases vary in respect to different mines; they allege that such royalties vary not
367 only because of the date or period of their execution, but because of the quality and quantity of the ore in or upon the property so leased, and said royalties vary because of the nature of the operation, whether open-pit or underground mining, necessary to extract ore from the property leased; they admit that no two miners will extract their ore at exactly the same cost per ton; they admit that no two mining properties will be subject to exactly the same ad valorem taxes; and they admit that plaintiffs will not each be required to pay, under this law, exactly the same number of dollars and cents, but that the amount of their taxes, in dollars and cents, will vary in direct relation to the magnitude or extent of their mining operations.

XVII.

Defendants deny all of the allegations of paragraph 17 of the bill of complaint.

XVIII.

Defendants admit that they are threatening to enforce said law according to its terms and provisions; they deny all other allegations of paragraph 18 of the bill of complaint.

Having thus made a full answer to all the matters and things contained in the bill, the defendants pray that the bill be dismissed and for judgment for their costs in this behalf incurred.

CLIFFORD L. HILTON,
Attorney General;
EGBERT S. OAKLEY,
Deputy Attorney General;
MONTREVILLE J. BROWN,
Assistant Attorney General,
Solicitors for Defendants.

102 State Capitol, St. Paul, Minnesota.

368 STATE OF MINNESOTA,
County of Ramsey, ss:

Samuel Lord, being first duly sworn, says that he is one of the defendants named in the bill of complaint herein; that he has read the foregoing answer and knows the contents thereof and that the same is true of his own knowledge, except as to matters therein stated upon information and belief, and as to those matters he believes it to be true.

SAMUEL LORD.

Subscribed and sworn to before me February 18, 1922.

[SEAL.] G. K. SPANGENBERG,
Notary Public, Ramsey County, Minnesota.

My commission expires Mar. 11, 1922.

Endorsed: Filed February 20, 1922. Joel M. Dickey, Clerk, by J. C. Herman Engel, Deputy.

That on the 25th day of January A. D. 1922, came the plaintiffs The Biwabik Mining Company, Inland Steel Company, Orwell Iron Company and Dean Iron Company, and filed with the Clerk of this Court their Bill of Complaint, which is in words and figures following, to-wit:

369 In the District Court of the United States, District of Minnesota, Fifth Division.

THE BIWABIK MINING COMPANY, INLAND STEEL COMPANY, ORWELL IRON COMPANY, and DEAN IRON COMPANY, Plaintiffs,

vs.

SAMUEL LORD, JAMES G. ARMSON, and ODIN HALDEN, Constituting the Minnesota Tax Commission; Clifford L. Hilton, Attorney General of Minnesota; Raymond P. Chase, State Auditor of Minnesota, and Henry Rines, State Treasurer of Minnesota, Defendants.

Bill of Complaint.

To the Judges of the District Court of the United States for the District of Minnesota:

The Biwabik Mining Company, a corporation organized and existing under the laws of the State of Ohio; Inland Steel Company, a corporation organized and existing under the laws of the State of Delaware, each of said corporations being and the same are qualified as foreign corporations in the state of Minnesota, and are authorized to do business in said State; Dean Iron Company, a corporation organized and existing under the laws of the State of Minnesota and having its principal place of business in Duluth, Minnesota; Orwell Iron Company, a corporation organized and existing under the laws of the State of Minnesota, and having its principal place of business in Duluth, Minnesota, bring this, their complaint against Samuel Lord, a resident of Dodge County, James G. Armson, a resident of Washington County, Odin Halden, a resident of St. Louis County, Clifford L. Hilton, a resident of Ramsey County, Raymond P. Chase, a resident of Anoka County, and Henry Rines, a resident of Kanabec County, and all residents and citizens of the State of Minnesota, and complain and say that,

1. The plaintiffs are and during the year 1921 were and for a long time prior thereto had been engaged in the business of mining and producing iron ore from mines owned or held under long term leases extending for upwards of 20 years, on the Mesaba and Cuyuna Ranges in the State of Minnesota.

370 2. The defendants Samuel Lord, James G. Armson and Odin Halden are the duly appointed members of and constitute the Minnesota Tax Commission of said State; the defendant Clifford L. Hilton is the duly elected and acting Attorney General of said State; the defendant Raymond P. Chase is the duly elected and acting State Auditor of said State; the defendant Henry Rines is the duly elected and acting State Treasurer of said State.

3. This is a suit in equity arising under the Constitution of the United States in that these plaintiffs seek to enjoin said defendants from acting under or in pursuance of or from in any way carrying

out or enforcing the provisions of a certain Act of the Legislature of the State of Minnesota, being Chapter 223 of the Laws of Minnesota for 1921, upon the ground that said statute and any and all acts done or attempted to be done thereunder by said defendants are and would be in violation of the Constitution of the United States. The taxes which these plaintiffs would be required to pay for the year 1921, under said Act, exceeds the sum of $3,000, and the matter in dispute in this suit exceeds, exclusive of interest and costs, the sum of $3,000.

4. The legislature of the State of Minnesota enacted Chapter 223 of the Laws of Minnesota, 1921, entitled "An act providing for the imposition of a tax upon persons, co-partnerships, companies, joint stock companies, corporations, and associations however organized engaged in the business of mining or producing iron ore and other ores, for enforcing and collecting the same and prescribing penalties for the violation thereof," which said act received the approval of the Governor on April 11, 1921. A copy of said act is attached to and made a part of this bill of complaint, being the last page of Exhibit B hereof.

5. The said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, and claiming to act in compliance with the provisions of said Act, heretofore and
371 during the month of January, 1922, sent to these plaintiffs and these plaintiffs received from said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Cmmission, notices calling upon these plaintiffs to file with said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, under oath, a report as required by Section 3 of said Act in the form prescribed by said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, for the calendar year 1921, giving complete information in answer to the questions enumerated in said form with reference to mining operations on each of the tracts and parcels of land described in the list hereto attached and made a part hereof, marked Exhibit A. The form of notice and report prescribed by said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, received by these plaintiffs is hereto attached and made a part hereof, marked Exhibit B.

6. The said Act, for the reasons and upon the grounds hereinafter more specifically stated, is unconstitutional, and therefore these plaintiffs are not required to file said report or pay the tax thereby imposed or otherwise comply with said Act. However, upon the failure of these plaintiffs so to file said report on or before the 1st day of February, 1922, said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, are required by Section 6 of said Act, and threaten to proceed upon such information as they may possess or obtain, to ascertain the kind and amount of ore mined or produced by these plaintiffs, together with the valuation thereof, and thereupon to find and determine the

amount of the tax due or claimed to be due from these plaintiffs and to add thereto a penalty for the failure of these plaintiffs so to report which will be equal to ten per cent of the tax so determined or attempted to be imposed and treated as a part thereof. Said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, are further authorized by said Act and threaten upon the failure of these plaintiffs to make such
372 report, to demand from these plaintiffs, under Section 13 of said Act, the inspection and examination of all books, waybills, inventories, correspondence and memoranda relating to or used in the transaction of plaintiffs' business, and upon the failure of plaintiffs to furnish the same, under the provisions of said section of said Act, plaintiffs will be guilty of a gross misdemeanor and subject to punishment therefor as provided by law. Said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, are further required under Section 8 of said Act, and threaten, on or before May 1st, 1922, to certify the amount of the tax so determined and the penalty thereon to the defendant Raymond P. Chase, as State Auditor. The legislature of the State of Minnesota in Chapter 377 Laws of 1921 made a specific appropriation of moneys for the Minnesota Tax Commission for the maintenance, carrying out and administering of the provisions of said Act. Said Raymond P. Chase, as State Auditor, is required by Section 8 of said Act, and threatens, to make his draft for the amount so certified and place the same in the hands of the defendant, Henry Rines, as State Treasurer, for collection. In case the tax provided for by said Act is not paid before June 1st, 1922, a penalty of ten per cent thereof will immediately accrue under the provisions of Section 9 of said Act, and thereafter one per cent per month will be added to such tax and penalty while the same remains unpaid. Said defendant Henry Rines, as State Treasurer, is required by Section 11 of said Act, and threatens to attempt to collect said draft, and upon the refusal of these plaintiffs to pay the same to deliver the same to the defendant Clifford L. Hilton, as Attorney General. Said Clifford L. Hilton, as Attorney General, under the provisions of said Section 11 of said Act, is required, and threatens to bring action thereon against these plaintiffs for the amount of such draft, together with interest, penalties and costs. If judgment is obtained against these plaintiffs in said action, the same would, under the provisions of said Act, bear interest at the rate of 1% per month,
which said amount would be in the nature of and would in
373 fact be a penalty upon these plaintiffs. Said persons defendant will severally so act wrongfully and unlawfully unless restrained therefrom by order of this court.

7. These plaintiffs are the owners in fee, or the lessees or the operators of said properties described in Exhibit A as indicated upon said Exhibit A for each of said properties respectively, and mine and produce, and during the calendar year 1921 did mine and produce, iron ore therefrom, and these plaintiffs are the persons who would be obliged to pay either finally or in the first instance all taxes levied

and assessed under said Act against said properties or the iron ore therein, or the iron ore mined therefrom, or upon the business or occupation or mining or producing iron ore therefrom, or upon the profits or income from said iron ore or from the business or occupation of mining or producing the same.

8. The tax imposed or attempted to be imposed by said Act is a property tax. Iron ore, whether mined or unmined, is classified as a single class for taxation purposes, under the laws of the State of Minnesota, Chapter 483, Laws 1913, and is subject to the general ad valorem property tax. Chapter 223, Laws of 1921, imposes a tax upon iron ore mined in a given calendar year. Therefore, in the year in which any particular iron ore is mined two taxes would be imposed upon that ore, whereas in said year ore that was still in the ground or ore that had been mined in previous years but was left in stockpile in Minnesota would be subject to but one tax. By reason of the facts alleged, these plaintiffs, who mined and removed iron ore as hereinbefore set forth during the calendar year 1921, are denied the equal protection of the laws in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States, and the said act results in a violation of the provisions of Article IX, Section 1, of the Constitution of the State of Minnesota, providing that taxes shall be uniform upon the same class of subjects.

9. Further said tax considered as a property tax violates the provisions of the Fourteenth Amendment of the Constitution
374 of the United States guaranteeing equal protection of the laws, and the provisions of Article IX, Section 1, Constitution of the State of Minnesota, providing that taxes shall be uniform upon the same class of subjects, in the following respects:

(*a*) These plaintiffs operate their mines in a highly efficient and economical manner. The Act imposes a higher tax upon ore produced by the efficient and economical operator than upon the inefficient and wasteful operator for the reason that the former is permitted under the Act a lower deduction by reason of his lower operating costs allowed to be deducted under Section 2 of said Act, and has to pay upon a higher taxable valuation.

(*b*) These plaintiffs operate both open pit mines and underground mines, as do other persons engaged in mining in Minnesota, some persons so engaged operating solely open pit mines, and other persons operating solely underground mines. Paragraphs 2 and 3 of Section 2 of said Act provide for certain deductions in the case of open pit and underground mines respectively. There is a difference in the amount of the expenditures per ton of ore allowed as deductions as between open pit mines on the one hand and underground mines on the other, and also as between different open pit mines and as between different underground mines. The cost of opening up open pit mines by removing the overburden, or underground mines by the sinking and construction of shafts and running drifts, was much

lower in years past than it has been in recent years. The cost further varies in any given year as between different properties because of physical differences in the properties, the location of said properties, and other factors. No deduction is allowed for interest and other carrying charges in connection with the development or construction work covered by said items, performed in previous years.

(*c*) The proportion which the tonnage produced bears to the total tonnage in a given mine, varies as between the properties operated by these plaintiffs, and also as between properties operated by these plaintiffs and other persons. The Act permits a deduction
375 of a percentage of the ad valorem taxes levied for the year against the realty in which the ore is deposited equal to the percentage that the tons mined or produced during such year bears to the total tonnage in the mine. Ore produced from a mine in which the ratio of production to total tonnage is high therefore has a taxable value which is lower than ore produced from a mine where said ratio is low. Said provision therefore results in inequality and lack of uniformity.

(*d*) The tax rates vary greatly in the different localities where the mines of these plaintiffs and other operators are situated, and therefore the ad valorem taxes levied against said properties vary greatly, thus resulting in unequal and un-uniform deductions under said provisions of said section.

(*e*) Section 2 provides that there shall be deducted from the value of the ore at the place where the same is brought to the surface of the earth for the purpose of determining the taxable value of said ores, among other items, the amount of royalties paid on the amount of ore mined or produced during the year. These plaintiffs own in fee, as aforesaid, certain lands as listed on Exhibit A, from which it mined or produced iron ore during the year 1921 upon which it will be required by said Act to pay taxes. No deduction equivalent to royalties paid on ore mined or produced from leased lands, is permitted to the owner in fee who mines or produces ore from its own properties. Royalties vary greatly from approximately 25 cents per ton to approximately $1.00 per ton and upward. These plaintiffs pay royalties upon some properties at the rate of 25 cents per ton or thereabouts, and the tax upon ore produced from such properties is higher because of the smaller deduction than upon ore produced from properties where a higher royalty is paid.

(*f*) Generally the operation of said act as a whole and of Section 2 thereof providing for the various deductions therein prescribed will result in inequality and lack of uniformity in the tax that would be levied and assessed thereunder.

376 10. Further the tax imposed by said Act as a property tax is a tax upon property which has become the subject of interstate transportation. Said tax is not laid upon said ore if and when unmined, but is imposed upon said ore if and when the same is raised to the surface of the earth. The process of mining and transporting

iron ore in Minnesota is practically a continuous and single process. In open pit mines said ore is dug from the earth by steam shovel and placed immediately in cars of an interstate common carrier awaiting the same in the open pit of said mine and by the same is brought to the surface of the earth. From said point the movement of said ore to the point where the cars are assembled into trains, from thence to the Lake Superior docks for delivery into vessels and by vessel to lower lake ports, is practically continuous. The process in the case of underground mines is substantially the same, save that the ore is hoisted to the surface and there immediately at the surface dumped into the cars of the interstate common carrier at the shaft house or headframe. This process is true of all the ore shipped, save as to a comparatively small tonnage thereof, which is temporarily placed in stockpile. All ore so mined and so transported is from the moment of its severance from the realty the subject of interstate transportation and interstate commerce, and a tax thereon is a direct interference with and burden upon interstate commerce and therefore in violation of Article 1, Section 8 of the Constitution of the United States, vesting in Congress the power to regulate commerce among the several states.

11. If the tax imposed or attempted to be imposed by said Act is not a property tax but is a tax upon the business and upon the mining and producing of iron ore then it is a direct interference with and a burden upon interstate commerce and therefore in violation of Article 1, Section 8 of the Constitution of the United States, vesting in Congress the power to regulate commerce among the several states.

Since the commencement of the iron mining industry in Minnesota, to the present time, substantially all, i. e. upwards of
377 99% of the ore mined and produced in Minnesota has been sold and shipped to consumers in other states. During the calendar year 1921, of the total number of tons of iron ore mined and produced in Minnesota, to-wit: 17,442,419 tons, only 261,622 tons were sold and shipped to the two consumers who are the only consumers of iron ore within the State of Minnesota, and the remainder was sold and shipped to consumers in other states, and the consumption of iron ore in Minnesota for the year 1921 was limited to a small percentage of the total amount of ore produced in said state and all the ore so mined and produced by these plaintiffs in said state during said year, was and of necessity had to be sold and shipped to consumers in other states. The process of mining and transporting iron ore generally in Minnesota is practically continuous, said ore, except for a small tonnage thereof placed in stockpile and a relatively small tonnage which is washed and concentrated as an incident to its shipment out of the state, being mined by steam shovel in open pit mines or raised in shafts from underground mines and loaded by steam shovel, or from shaft houses directly into railroad cars, therein transported to the ports of Two Harbors or Duluth, Minnesota, or Superior, Wisconsin, there loaded directly into vessels and transported to the lower lake ports, where the same is delivered. By reason of the foregoing facts, it has been, is and will be in the

future a matter of commercial necessity that practically all of the iron ore produced in Minnesota has been, is and will continue to be sent into interstate commerce.

These plaintiffs, before the beginning of the season of 1921 during which iron ore was shipped, namely at or shortly after the beginning of the year 1921, entered into numerous contracts (there being a separate contract covering the estimated output of each of the mines in Minnesota which it operated) with consumers of ore having furnaces in states other than Minnesota, whereby it agreed to
378 mine, sell and deliver to said consumers f. o. b. vessels at specified ports on Lake Erie or Lake Michigan a stated number of tons of iron ore more or less from each of said mines. The quantity of ore stated in each contract was the estimated output of the mines covered by the contract for the year 1921, and it was the intention of the parties and the effect of the contract to cover all of the ore produced during said year from said mine. The ore produced by these plaintiffs from the properties hereinbefore described was produced pursuant to said contracts. The process of mining and transporting iron ore pursuant to said contracts is the same as that in vogue generally in Minnesota as above described.

The course of business described above, pursued by these plaintiffs during the year 1921 has been and is the course uniformly pursued by these plaintiffs and to be pursued in the year 1922 and in the future. By reason of the facts hereinabove alleged, the mining and producing of iron ore by these plaintiffs and by all of the persons engaged therein in the state of Minnesota is a part and incident of interstate commerce, and the tax imposed or attempted to be imposed by said Act is a direct interference with and burden upon interstate commerce as aforesaid.

12. If said act imposes a tax upon the occupation of mining and producing iron ore in the State of Minnesota, it violates the Fourteenth Amendment to the Constitution of the United States providing that no State shall deny to any person within its jurisdiction the equal protection of the laws, and violates Article IX, Section 1 of the Constitution of the State of Minnesota providing that taxes shall be uniform upon the same class of subjects by reason of the provisions of Section 2 of said act and of the facts alleged and the matters pleaded in section 9 hereof in connection with
379 the allegations that said tax violates said provisions as a tax upon property.

13. If said act is an act imposing a tax upon occupations it denies to these plaintiffs the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States and violates the provisions of Section 1, Article 9 of the Constitution of the State of Minnesota in that it singles out unreasonably and arbitrarily the business of mining iron ore and other ores, and imposes a tax thereon alone, discriminating against said occupation and unreasonably excluding from its operation other like occupations such as the mining and quarrying of rock, the digging of sand and gravel and also the business of those persons who may be

and who in fact are engaged in removing overburden from open pit mines upon the Missabe Range in Minnesota.

14. If the tax imposed by said act is not a property tax as hereinbefore alleged and is an occupation tax then the same is invalid for the reason that the Constitution of the State of Minnesota does not permit the imposition of any tax upon occupations as a subject of taxation.

15. If the tax imposed by said act is not a tax upon property as hereinbefore alleged and not a tax upon occupation then it is a tax upon the income of persons engaged in the production of iron or other ores and does not impose a tax upon the income of any other person or class of persons or income derived from any other source, and there is no other class of income taxed in any manner under the laws of Minnesota. The constitution of the State of Minnesota does not permit the imposition of a tax upon income of one person or of one class of persons or upon income from a single source to be selected by the Legislature for the purpose of taxation and does not permit the imposition of any income tax whatsoever.

380 16. Said act further violates the Fourteenth Amendment of the Constitution of the United States in that it deprives all persons, including these plaintiffs, engaged in the business of mining or producing iron ore in the State of Minnesota of the equal protection of the laws and renders their property liable to be taken without due process of law, all in violation of the Fourteenth Amendment to the Constitution of the United States, in that the penalties fixed for the failure of said persons to make reports as provided in Section 3 of said Act and for failure to open for the inspection and examination of the Minnesota Tax Commision their books, waybills, inventories, correspondence and memoranda relating to or used in connection with their ownership or operation of a mine or mines in Minnesota and for failure to pay the tax imposed or sought to be imposed by said Act are so excessive as to intimidate, coerce and compel said persons, including these plaintiffs, to comply with the provisions of said Act without the freedom of resorting to the courts to test the validity of the provsions of said Act. The plaintiffs are informed and believe and on information and belief allege that the defendants acting as the Minnesota Tax Commission intend and threaten to levy and assess a tax against these plaintiffs and each of them or against said properties or against the iron ore mined and removed therefrom in a very large sum for the year 1921; that a penalty of 10% thereof will amount to a further large sum; that a penalty of 1% per month or 12% per year will amount to an additional large sum.

17. No provision is made in said Act for the refundment of any money paid as taxes pursuant to its provisions if it be finally found and determined that said Act is in fact unconstitutional and
381 void, and there is no provision in the Statutes of Minnesota or at common law giving to these plaintiffs or anyone the

right or power to compel the State of Minnesota to refund money paid as taxes pursuant to said Act. The only way open to these plaintiffs in a court of law to test the constitutionality or validity of said Act is to refuse to comply with said Act and to refuse to pay the taxes which said Act purports to impose and thereby expose itself to the danger of being liable for the excessive penalties provided in said act. Therefore these plaintiffs have no plain, adequate and complete remedy at law.

18. If for the purpose of testing the constitutionality and validity of said Act, these plaintiffs refuse and decline to make such report on or before February 1st, or to pay said tax or otherwise to comply with said Act, they and their officers and agents may be and as these plaintiffs verily believe will be subjected to many suits brought by or on behalf of the State of Minnesota. The defendants constituting the Minnesota Tax Commission have, as hereinbefore alleged, required from these plaintiffs separate reports from each mine operated, and if said defendants proceed to determine a tax with reference to each mine (except where the operation of such mine was conducted at a loss or so that no taxable value is arrived at under said Act) and cause a draft to be drawn for the taxes so determined against each such mine, and said defendant Hilton, as Attorney General, brings suit on each of said drafts, there will result a multiplicity of suits against these plaintiffs. A criminal action may be brought against these plaintiffs' officers and agents as aforesaid by reason or failure to open for inspection and
382 examination to the Minnesota Tax Commission its books, waybills, inventories, correspondence and memoranda as provided in Section 13 of said Act, and actions may be brought against these plaintiffs, in case they fail to pay the tax aforesaid for the year 1921 and for the succeeding years, for the collection of said tax as provided in said act. Therefore these plaintiffs, themselves and through their officers and agents, will be subjected to a multiplicity of suits.

19. If the plaintiffs are not granted immediate relief by this court of equity, defendants Lord, Armson and Halden, acting as the Minnesota Tax Commission, threaten to and will, as these plaintiffs believe, require or attempt to require shortly after February 1, 1922, these plaintiffs to open to said defendants for examination and inspection their books, waybills, inventories, correspondence and memoranda as provided in Section 13 of said Act, and if these plaintiffs' agents or officers having control of such papers and books shall neglect and refuse, on demand of said defendants acting as the Minnesota Tax Commission, to permit such examination and inspection, they will be guilty of a gross misdemeanor and punishable therefor. Further, if, for the purpose of testing the constitutionality and validity of said Act, these plaintiffs refuse to render the report required in Section 3 of said Act by February 1st, 1922, a penalty of ten per cent of the tax computed by the Minnesota Tax Commisison will, under the provisions of Section 6 of

said Act, be added to the tax. Therefore these plaintiffs are threatened with immediate and irreparable injury.

20. By reason of all of the foregoing facts set forth in this bill of complaint these plaintiffs are threatened with immediate and irreparable injury and a multiplicity of actions if this court of equity does not grant the relief herein prayed, and have and can have no plain, adequate and complete remedy at law.

383 Wherefore, these plaintiffs pray this Honorable Court for a judgment and decree against the defendants and each of them as follows:

1. To grant to it and against the defendants and each of them, individually or in their representative capacities as officers of the State of Minnesota, a temporary restraining order upon the filing of this complaint to be replaced by an interlocutory injunction to be granted by an enlarged court of three judges, pursuant to Section 266 of the Judicial Code of the United States, and that upon a final hearing, to be succeeded in turn by a permanent injunction restraining, enjoining and prohibiting said defendants, either as individuals or as representatives of the State of Minnesota, from acting under or in pursuance of or from in any way carrying out or enforcing the provisions of the Act of the Legislature of the State of Minnesota, being Chapter 223 of the Laws of Minnesota for 1921 and entitled "An Act providing for the imposition of a tax upon persons, copartnerships, companies, joint stock companies, corporations and associations however organized, engaged in the business of mining or producing iron ore and other ores, for enforcing and collecting the same, and prescribing penalties for the violation thereof."

2. To grant to these plaintiffs such other and further relief as this Honorable Court shall deem just and equitable.

HOWARD T. ABBOTT,
E. W. MACPHERRAN,
Solicitors for Plaintiffs.

1000 Alworth Building, Duluth, Minnesota.

ABBOTT, MACPHERRAN, GILBERT & DOAN, *Of Counsel.*

384 STATE OF MINNESOTA,
County of St. Louis, ss:

E. W. MacPherran came before me personally, and being duly sworn, doth say that he is one of the attorneys for the Plaintiffs in the above entitled action; that the foregoing Bill of Complaint is true to the best of his knowledge, information and belief. That the reason why this affidavit is not made by officers of the plaintiffs or one of them is that said officers are all absent from said County of St. Louis; wherein said attorney resides.

E. W. MACPHERRAN.

Subscribed and sworn to before me this 25th day of January, A. D. 1922.

[Notarial Seal.] GEO. M. GILBERT,
Notary Public, St. Louis County, Minn.

My Commission expires June 7, 1925.

385–391 EXHIBIT "A."

Statement of Mines for Which Occupation Tax Reports for 1921 *Have Been Requested by Minnesota Tax Commission.*

The Biwabik Mining Company.

Biwabik Mine, Lot 4, Section 2, T. 58 N. R. 16 W. Leasehold.

Dean Iron Company.

Dean Mine, S. ½ N. E. ¼ Section 15, T. 58, N. R. 19 W.
S. E. ¼ N. W. ¼ " " " " " " " "
Leasehold.
Itasca Mine, E. ½ S. W. ¼ " " " " " " " "
Leasehold.
North Eddy Mine, S. W. ¼ N. E. ¼ " 11, T. 57, N. R. 21 W.
Leasehold.
N. W. ¼ S. E. ¼ " " " " " " " "

Orwell Iron Company.

Dunwoodie Mine, Entire S. W. ¼, Section 27, T. 58, N. R. 20 W. Leasehold.

Inland Steel Company.

Armour No. 2 Mine, S. ½ N. W. ¼ Section 11, T. 46, N. R. 29 W. Leasehold.
Armour No. 1 Mine, S. E. ¼ N. E. ¼ Section 10, T. 46, N. R. 29 W. Leasehold.
Thompson Mine, S. W. ¼ S. E. ¼ Section 2, T. 46, N. R. 29 W. Leasehold.
(State Lease #775.)
Laura Mine, S. W. ¼ S. E. ¼ Section 31, T. 58, N. R. 20 W. Leasehold.

* * * * * * *

392 Endorsed: Filed January 25, 1922. Joel M. Dickey, Clerk, by E. Catherine Neff, Deputy.

That on the 20th day of February, A. D. 1922, there was filed in the office of the Clerk of this Court, the answer of the defendants in this cause to the Bill of Complaint of The Biwabik Mining Co., et al., which is in words and figures following, to-wit:

393 In the District Court of the United States, District of Minnesota, Fifth Division.

In Equity.

THE BIWABIK MINING COMPANY, INLAND STEEL COMPANY, ORWELL IRON COMPANY, and DEAN IRON COMPANY, Plaintiffs,

vs.

SAMUEL LORD, JAMES G. ARMSON, and ODIN HALDEN, Constituting the Minnesota Tax Commission; Clifford L. Hilton, Attorney General of Minnesota; Raymond P. Chase, State Auditor of Minnesota, and Henry Rines, State Treasurer of Minnesota, Defendants.

Answer to Bill of Complaint.

The above named defendants for their joint and several answers to the bill of complaint of plaintiffs in the above entitled cause, respectfully represent and state to the court as follows:

I.

The defendants admit the allegations of Paragraph 1, of said bill of complaint.

II.

Defendants admit the allegations of Paragraph 2, of said bill of complaint.

III.

Defendants admit that plaintiffs in this suit seek to enjoin said defendants from enforcing the provisions of a certain act of the legislature of the State of Minnesota, being Chapter 223, of the Laws of Minnesota for 1921, upon the ground of its unconstitutionality.

394 Defendants admit that the taxes which plaintiffs would be required to pay for the year 1921 under said act, exceed the sum of $3,000.00, and that the matter in dispute in this suit exceeds, exclusive of interests and costs, the sum of $3,000.00.

Defendants expressly deny that this is a suit properly brought in equity and expressly deny that any sufficient ground for equitable relief is stated or exists, and defendants deny that said act is in violation of any provision of the constitution of the United States, or of the State of Minnesota.

IV.

Defendants admit the allegations of Paragraph 4, of said bill of complaint.

V.

Defendants admit the allegations of Paragraph 5, of said bill of complaint.

VI.

Defendants deny that said act, to-wit: Chapter 223, Laws 1921, is unconstitutional upon any of the grounds set forth in Paragraph 6, of the bill of complaint. Defendants admit that unless restrained they will enforce said law.

VII.

Defendants state that they have no knowledge as to the interest of the plaintiffs in the properties described in Exhibit A, attached to the bill of complaint, but defendants believe that plaintiffs' rights therein are correctly set forth in said Paragraph 7, of the bill of complaint, and defendants further believe that the plaintiffs are the persons who will be obliged to pay the tax arising out of the occupation of mining the properties described in said Exhibit A.

395 VIII.

Defendants deny all of the allegations of Paragraph 8, of the bill of complaint, except they admit that an ad valorem tax is imposed by the laws (Chap. 483, Laws 1913) of the state upon iron mines.

IX.

Defendants deny that said tax is a property tax or that it violates the fourteenth amendment to the Constitution of the Unied States, or that it violates Section 1, Article 9, of the Constitution of the State of Minnesota, in respect to any of the matters set forth in the various subdivisions of Paragraph 9 of the bill of complaint, but allege, on the contrary that any difference in the cost of operating iron mines arises out of the circumstances and situation of the mine operators and their properties and that each and all of the provisions of said law therein referred to in respect to deductions from the cost of operating mines or otherwise are designed to and accomplish the purpose of imposing uniform and equal taxes upon all persons, copartnerships, joint stock companies and associations engaged in that business.

X.

Defendants repeat their denial that said law imposes a property tax. They deny that the process of mining and transporting ore is a continuous process and deny that plaintiffs' iron ore is mined and transported as set forth in paragraph 10 of the bill of complaint. They allege that, except as to "wash ore" or so-called "low grade ore", the manner and method of delivering the same for transportation, and for transporting same is as follows:

The plaintiffs have constructed and own railway tracks running through and upon their open pit mines; that said plaintiffs
396 own railway engines operated by their own employes; that the carrier operating the lines over which plaintiffs' ore is to be shipped from said open pit mines, when called upon to do so by plaintiffs, sets out on its side tracks for use of plaintiffs such empty cars as plaintiffs may require; that thereupon plaintiffs, with their engines and through their employes, go upon the sidings of such carrier and take such empty cars into and upon such open pit mines, load such cars with ore, and thereafter deliver them at such railway side tracks to such carrier with directions as to their movement and destination.

That ore from underground mines is brought to the surface, through shafts, in "skips", so-called, to the shaft house. During a part of the year the ore is deposited in pockets at the shaft house for loading into railway cars. During the remainder of the year the ore is carried from the shaft house to a stock pile, there to await later loading into cars. That nearly 50% of the ore mined is so deposited in stock piles. The shaft house is reached by side tracks owned by carriers, which tracks lie directly beneath the pockets. Plaintiffs call upon the carrier to furnish such cars as they may require and these cars are set out upon such side tracks and plaintiffs' employes move such cars, usually one or two at a time, beneath the ore pockets, load such cars, assemble them when loaded, and notify carrier of their readiness for movement, and the carrier then takes such shipment to destination. Ore in stock pile is loaded by plaintiffs by steam shovels into cars similarly assigned by the carrier, and moved, assembled and delivered by plaintiffs in substantially the same manner as are cars loaded from pockets.

That "wash ore" so-called, is taken from the mine, whether the same be an open pit mine or an underground mine, by plaintiffs through their employes, and upon their own cars drawn by
397 their own locomotives, and is carried and transported over its own railway tracks to a washing plant or concentrating plant, distant from one to five miles from such mines; it is there beneficiated by plaintiffs, that is, washed free of sand and other foreign substances, and thereafter such beneficiated ore, commonly called concentrates, is shipped by plaintiffs to furnaces in their usual course of business.

Defendants deny that ore is the subject of interstate transportation from the time of its severance from the realty and deny that the tax imposed upon the plaintiffs interferes with or burdens commerce in violation of Article 1, Section 8, of the Constitution of the United States as alleged in Paragraph number 10, of the bill of complaint.

XI.

Defendants deny that such tax is a direct interference with or a burden upon interstate commerce. Defendants, although having no knowledge of the exact amount, admit that a very large percentage of the iron ore mined in Minnesota, after being mined, is, and for some

time to come may be, shipped via the Great Lakes to so-called lower lake ports and there sold or delivered to furnace consumers.

Further answering the allegations of Paragraph 11, of the bill of complaint, the defendants reassert the allegations set forth in Paragraph 10, of this answer, which allegations relate to the manner of mining iron ore and the delivery thereof to the initial common carrier for transportation. Defendants state that they have no knowledge but believe to be true the allegations in Paragraph 11 of the bill of complaint relating to contracts covering the sale and delivery of the estimated output of each of plaintiffs' mines in Minnesota.

XII.

The defendants deny that said legislative act of Minnesota
398 deprives the plaintiffs of the equal protection of the law guaranteed under the Fourteenth Amendment to the Constitution of the United States. Defendants deny that said law offends against the requirement as to uniformity provided for in Section 1, Article 9, of the Constitution of the State of Minnesota, as alleged in Paragraph 12 of the bill of complaint.

XIII.

Defendants deny that the legislative act in question, by singling out the business of mining ore, makes an illegal classification in violation of the Fourteenth Amendment to the Constitution of the United States or of Section 1, Article 9, of the State Constitution, and defendants allege that there is in Minnesota no other occupation or business similar to or like the business of mining or producing iron ore or other ores.

XIV.

Defendants deny the allegations of Paragraph number 14 of the bill of complaint.

XV.

Defendants deny that the tax imposed by the act in question is an income tax and, on the contrary, they allege that it is the purpose and effect of said statute to impose a business or occupation tax upon plaintiffs based upon the amount of ore produced, which tax is equalized and made uniform by basing the tax upon the value of the ore produced and by allowing certain deductions therefrom, which deductions are principally designed to equalize the tax upon underground mining and the tax upon open pit mining. That mining or producing ore from an underground mine is widely different from mining or producing ore from an open pit mine. The ore in underground mines lies at a considerable depth below the surface of the earth; shafts are sunk to the ore bodies; tunnels or drifts are driven at different levels into the ore bodies and the ore thus reached is separated and brought to the mouth of the shaft by manual labor.

The amount of ore which may be extracted from an under-
399 ground mine in a given time is restricted by the limitations of space and openings thus imposed. The ore in open pit mines lies near the surface of the earth; the over burden of the ore is stripped off the ore bodies and thereafter the operation is simply one of separating the ore by means of steam shovels and loading it into cars brought into the pit of the mines as hereinbefore described. The cost of producing a ton of ore from an underground mine greatly exceeds the cost of procuring a ton of ore of like quality from an open pit mine.

XVI.

Defendants deny that said act violates the "equal protection" or "due process of law" provisions of the Fourteenth Amendment to the Constitution of the United States and defendants deny that the penalties (prescribed by said act) are excessive or are such as to intimidate or coerce plaintiffs as alleged in Paragraph 16 of the bill of complaint. Defendants further state that they have no knowledge or belief as to the amount of the tax which under said law will be imposed upon the plaintiffs.

XVII.

Defendants deny that the plaintiffs have no plain, adequate and complete remedy at law because of the penalties provided for in said act, and in that connection defendants allege that the prescribed penalties are not more severe than are ordinarily and usually provided for in taxation laws.

XVIII.

Defendants deny that if plaintiffs, for the purpose of testing the constitutionality and validity of said act, refuse and neglect to comply with the requirements thereof, they and their officers and agents may be, or will be, subjected to many suits brought by or on behalf of the State of Minnesota. Defendants admit
400 that the Minnesota Tax Commission has requested these plaintiffs as to each property being mined by them to file the report required by Section 3 of said act. Defendant Hilton as attorney general denies that he intends or proposes to bring separate actions against plaintiffs on account of each of their mines, and alleges that said Chapter 223, Laws 1921, contemplates but a single action against plaintiffs if they shall fail to pay taxes assessed against them thereunder, and defendant Attorney General Hilton alleges that he will commence and prosecute against plaintiffs only the single suit provided for in said act.

XIX.

Defendants admit the allegations of Paragraph 19, of the bill of complaint, except they expressly deny that the plaintiffs are threatened with immediate and irreparable injury.

XX.

Defendants deny that the plaintiffs are threatened with immediate and irreparable injury and a multiplicity of suits. They deny that the plaintiffs have no plain, adequate and complete remedy at law as alleged in Paragraph 20 of the bill of complaint.

Having thus made a full answer to all the matters and things contained in the bill, the defendants pray that the bill be dismissed and for judgment for their costs in this behalf incurred.

CLIFFORD L. HILTON,
Attorney General;
EGBERT S. OAKLEY,
Deputy Attorney General;
MONTREVILLE J. BROWN,
Assistant Attorney General,
Solicitors for Defendants.

102 State Capitol, St. Paul, Minn.

401 STATE OF MINNESOTA,
County of Ramsey, ss:

Samuel Lord, being first duly sworn, says that he is one of the defendants named in the bill of complaint herein; that he has read the foregoing answer and knows the contents thereof and that the same is true of his own knowledge, except as to matters therein stated upon information and belief, and as to those matters he believes it to be true.

SAMUEL LORD.

Subscribed and sworn to before me February 18, 1922,
[SEAL.] (G. K. SPANGENBERG,)
Notary Public, Ramsey County, Minnesota.

My commission expires Mar. 11, 1922.

Endorsed: Filed February 20, 1922. Joel M. Dickey, Clerk, by J. C. Herman Engel, Deputy.

That on the 27th day of January, A. D. 1922, came the plaintiffs Inter-State Iron Company and Leetonia Mining Company, by their attorneys, and filed their bill of complaint in said cause, which is in words and figures following, to-wit:

402 In the District Court of the United States, District of Minnesota, Fifth Division.

INTER-STATE IRON COMPANY and LEETONIA MINING COMPANY, Plaintiffs,

vs.

SAMUEL LORD, JAMES G. ARMSON, and ODIN HALDEN, Constituting the Minnesota Tax Commission; Clifford L. Hilton, Attorney General of Minnesota; Raymond P. Chase, State Auditor of Minnesota, and Henry Rines, State Treasurer of Minnesota, Defendants.

Bill of Complaint.

To the Judges of the District Court of the United States for the District of Minnesota:

Inter-State Iron Company, a corporation organized and existing under the laws of the State of Minnesota and having its principal place of business in Duluth, Minnesota, and a citizen of said State; Leetonia Mining Company, a corporation organized and existing under the laws of the State of Minnesota, and having its principal place of business in Duluth, Minnesota, and a citizen of said State, bring this, their complaint against Samuel Lord, a resident of Dodge County, James G. Armson, a resident of Washington County, Odin Halden, a resident of St. Louis County, Clifford L. Hilton, a resident of Ramsey County, Raymond P. Chase, a resident of Anoka County, and Henry Rines, a resident of Kanabec County, and all residents and citizens of the State of Minnesota, and complain and say that,

1. The Plaintiffs are and during the year 1921 were and for a long time prior thereto had been engaged in the business of mining and producing iron ore from mines owned or held under long term leases extending for upwards of 20 years, on the Mesaba Range in the State of Minnesota.

403 2. The defendants Samuel Lord, James G. Armson and Odin Halden are the duly appointed members of and constitute the Minnesota Tax Commission of said State; the defendant Clifford L. Hilton is the duly elected and acting Attorney General of said State; the defendant Raymond P. Chase is the duly elected and acting State Auditor of said State; the defendant Henry Rines is the duly elected and acting State Treasurer of said State.

3. This is a suit in equity arising under the Constitution of the United States in that these plaintiffs seek to enjoin said defendants from acting under or in pursuance of or from in any way carrying out or enforcing the provisions of a certain Act of the Legislature of the State of Minnesota, being Chapter 223 of the Laws of Minnesota for 1921, upon the ground that said statute and any and all acts done or attempted to be done thereunder by said defendants are

and would be in violation of the Constitution of the United States. The taxes which these plaintiffs would be required to pay for the year 1921, under said Act, exceeds the sum of $3,000, and the matter in dispute in this suit exceeds, exclusive of interest and costs, the sum of $3,000.

4. The legislature of the State of Minnesota enacted Chapter 223 of the Laws of Minnesota, 1921, entitled "An act providing for the imposition of a tax upon persons, co-partnerships, companies, joint stock companies, corporations, and associations however organized engaged in the business of mining or producing iron ore and other ores, for enforcing and collecting the same and prescribing penalties for the violation thereof," which said act received the approval of the Governor on April 11, 1921. A copy of said act is attached to and made a part of this bill of complaint, being the last page of Exhibit B hereof.

5. The said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, and claiming to act in compliance with the provisions of said Act, heretofore and during
404 the month of January, 1922, sent to these plaintiffs and these plaintiffs received from said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, notices calling upon these plaintiffs to file with said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, under oath, a report as required by Section 3 of said Act in the form prescribed by said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, for the calendar year 1921, giving complete information in answer to the questions enumerated in said form with reference to mining operations on each of the tracts and parcels of land described in the list hereto attached and made a part hereof, marked Exhibit A. The form of notice and report prescribed by said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, received by these plaintiffs is hereto attached and made a part hereof, marked Exhibit B.

6. The said Act, for the reasons and upon the grounds hereinafter more specifically stated, is unconstitutional, and therefore these plaintiffs are not required to file said report or pay the tax thereby imposed or otherwise comply with said Act. However, upon the failure of these plaintiffs so to file said report on or before the 1st day of February, 1922, said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, are required by Section 6 of said Act, and threaten to proceed upon such information as they may possess or obtain, to ascertain the kind and amount of ore mined or produced by these plaintiffs, together with the valuation thereof, and thereupon to find and determine the amount of the tax due or claimed to be due from these plaintiffs and to add thereto a penalty for the failure of these plaintiffs so to report which will be equal to ten per cent of the tax so determined or attempted to be imposed and treated as a part thereof. Said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota

Tax Commission, are further authorized by said Act and threaten upon the failure of these plaintiffs to make such report, to
405 demand from these plaintiffs, under Section 13 of said Act, the inspection and examination of all books, waybills, inventories, correspondence and memoranda relating to or used in the transaction of plaintiffs' business, and upon the failure of plaintiffs to furnish the same, under the provisions of said section of said Act, plaintiffs will be guilty of a gross misdemeanor and subject to punishment therefor as provided by law. Said Samuel Lord, James G. Armson and Odin Halden, acting as the Minnesota Tax Commission, are further required under Section 8 of said Act, and threaten, on or before May 1st, 1922, to certify the amount of the tax so determined and the penalty thereon to the defendant Raymond P. Chase, as State Auditor. The legislature of the State of Minnesota in Chapter 377 Laws of 1921 made a specific appropriation of moneys for the Minnesota Tax Commission for the maintenance, carrying out and administering of the provisions of said Act. Said Raymond P. Chase, as State Auditor, is required by Section 8 of said Act, and threatens, to make his draft for the amount so certified and place the same in the hands of the defendant, Henry Rines, as State Treasurer, for collection. In case the tax provided for by said Act is not paid before June 1st, 1922, a penalty of ten per cent thereof will immediately accrue under the provisions of Section 9 of said Act, and thereafter one per cent per month will be added to such tax and penalty while the same remains unpaid. Said defendant Henry Rines, as State Treasurer, is required by Section 11 of said Act, and threatens to attempt to collect said draft, and upon the refusal of these plaintiffs to pay the same to deliver the same to the defendant Clifford L. Hilton, as Attorney General. Said Clifford L. Hilton, as Attorney General, under the provisions of said Section 11 of said Act, is required, and threatens to bring action thereon against these plaintiffs for the amount of such draft, together with interest, penalties and costs. If judgment is obtained against these plaintiffs in said action, the same would, under the provisions of said Act, bear interest at the rate of 1% per month, which said amount would be in the nature of and would in fact be a penalty upon these
406 plaintiffs. Said persons defendant- will severally so act wrongfully and unlawfully unless restrained therefrom by order of this court.

7. These plaintiffs are the owners in fee, or the lessees or the operators of said properties described in Exhibit A as indicated upon said Exhibit A for each of said properties respectively, and mine and produce, and during the calendar year 1921 did mine and produce, iron ore therefrom, excepting from the Grant Mine from which no ore was produced; and these plaintiffs are the persons who would be obliged to pay either finally or in the first instance all taxes levied and assessed under said Act against said properties or the iron ore therein, or the iron ore mined therefrom, or upon the business or occupation of mining or producing iron ore therefrom, or upon the profits or income from said iron ore or from the business or occupation of mining or producing the same.

8. The tax imposed or attempted to be imposed by said Act is a property tax. Iron ore, whether mined or unmined, is classified as a single class for taxation purposes, under the laws of the State of Minnesota, Chapter 483, Laws 1913, and is subject to the general ad valorem property tax. Chapter 223, Laws of 1921, imposes a tax upon iron ore mined in a given calendar year. Therefore, in the year in which any particular iron ore is mined two taxes would be imposed upon that ore, whereas in said year ore that was still in the ground or ore that had been mined in previous years but was left in stockpile in Minnesota would be subject to but one tax. By reason of the facts alleged, these plaintiffs, who mined and removed iron ore as hereinbefore set forth during the calendar year 1921, are denied the equal protection of the laws in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States, and the said act results in a violation of the provisions of Article IX, Section 1, of the Constitution of the State of Minnesota, providing that taxes shall be uniform upon the same class of subjects.

9. Further said tax considered as a property tax violates the provisions of the Fourteenth Amendment of the Constitution of
407 the United States guaranteeing equal protection of the laws, and the provisions of Article IX, Section 1, Constitution of the State of Minnesota, providing that taxes shall be uniform upon the same class of subjects, in the following respects:

(*a*) These plaintiffs operate their mines in a highly efficient and economical manner. The Act imposes a higher tax upon ore produced by the efficient and economical operator than upon the inefficient and wasteful operator for the reason that the former is permitted under the Act a lower deduction by reason of his lower operating costs allowed to be deducted under Section 2 of said Act, and has to pay upon a higher taxable valuation.

(*b*) These plaintiffs operate both open pit mines and underground mines, as do other persons engaged in mining in Minnesota, some persons so engaged operating solely open pit mines, and other persons operating solely underground mines. Paragraphs 2 and 3 of Section 2 of said Act provide for certain deductions in the case of open pit and underground mines respectively. There is a difference in the amount of the expenditures per ton of ore allowed as deductions as between open pit mines on the one hand and underground mines on the other, and also as between different open pit mines and as between different underground mines. The cost of opening up open pit mines by removing the overburden, or underground mines by the sinking and construction of shafts and running drifts, was much lower in years past than it has been in recent years. The cost further *various* in any given year as between different properties because of physical differences in the properties, the location of said properties, and other factors. No deduction is allowed for interest and other carrying charges in connection with the development or construction work covered by said items, performed in previous years.

(c) The proportion which the tonnage produced bears to the total tonnage in a given mine, varies as between the properties operated by these plaintiffs, and also as between properties operated by these plaintiffs and other persons. The Act permits a deduction of
408 a percentage of the ad valorem taxes levied for the year against the realty in which the ore is deposited equal to the percentage that the tons mined or produced during such year bears to the total tonnage in the mine. Ore produced from a mine in which which the ratio of production to total tonnage is high therefore has a taxable value which is lower than ore produced from a mine where said ratio is low. Said provision therefore results in inequality and lack of uniformity.

(d) The tax rates vary greatly in the different localities where the mines of these plaintiffs and other operators are situated, and therefore the ad valorem taxes levied against said properties vary greatly, thus resulting in unequal and ununiform deductions under said provisions of said section.

(e) Section 2 provides that there shall be deducted from the value of the ore at the place where the same is brought to the surface of the earth for the purpose of determining the taxable value of said ores, among other items, the amount of royalties paid on the amount of ore mined or produced during the year. Royalties vary greatly from approximately 25 cents per ton to approximately $1.00 per ton and upward. These plaintiffs pay royalties upon some properties at the rate of 25 cents per ton or thereabouts, and the tax upon ore produced from such properties is higher because of the smaller deduction than upon ore produced from properties where a higher royalty is paid.

(f) Generally the operation of said act as a whole and of Section 2 thereof providing for the various deductions therein prescribed will result in inequality and lack of uniformity in the tax that would be levied and assessed thereunder.

409 10. Further the tax imposed by said Act as a property tax, is a tax upon property which has become the subject of interstate transportation. Said tax is not laid upon said ore if and when unmined, but is imposed upon said ore if and when the same is raised to the surface of the earth. The process of mining and transporting iron ore in Minnesota is practically a continuous and single process. In open pit mines said ore is dug from the earth by steam shovel and placed immediately in cars of an interstate common carrier awaiting the same in the open pit of said mine and by the same is brought to the surface of the earth. From said point the movement of said ore to the point where the cars are assembled into trains, from thence to the Lake Superior docks for delivery into vessels and by vessel to lower lake ports, is practically continuous. The process in the case of underground mines is substantially the same, save that the ore is hoisted to the surface and there im-

mediately at the surface dumped into the cars of the interstate common carrier at the shaft house or headframe. This process is true of all the ore shipped, save as to a comparatively small tonnage thereof, which is temporarily placed in stockpile. All ore so mined and so transported is from the moment of its severance from the realty the subject of interstate transportation and interstate commerce, and a tax thereon is a direct interference with and burden upon interstate commerce and therefore in violation of Article 1, Section 8 of the Constitution of the United States, vesting in Congress the power to regulate commerce among the several states.

11. If the tax imposed or attempted to be imposed by said Act is not a property tax but is a tax upon the business and upon the mining and producing of iron ore then it is a direct interference with and a burden upon interstate commerce and therefore in violation of Article 1, Section 8 of the Constitution of the United States, vesting in Congress the power to regulate commerce among the several states.

Since the commencement of the iron mining industry in Minnesota, to the present time, substantially all, i. e. upwards of
410 99% of the ore mined and produced in Minnesota has been sold and shipped to consumers in other states. During the calendar year 1921, of the total number of tons of iron ore mined and produced in Minnesota, to wit: 17,442,419 tons, only 261,622 tons were sold and shipped to the two consumers who are the only consumers of iron ore within the State of Minnesota, and the remainder was sold and shipped to consumers in other states, and the consumption of iron ore in Minnesota for the year 1921 was limited to a small percentage of the total amount of ore produced in said state and all the ore so mined and produced by these plaintiffs in said state during said year, was and of necessity had to be sold and shipped to consumers in other states. The process of mining and transporting iron ore generally in Minnesota is practically continuous, said ore, except for a small tonnage thereof placed in stockpile and a relatively small tonnage which is washed and concentrated as an incident to its shipment out of the state, being mined by steam shovel in open pit mines or raised in shafts from underground mines and loaded by steam shovel, or from shaft houses directly into railroad cars, therein transported to the ports of Two Harbors or Duluth, Minnesota, or Superior, Wisconsin, there loaded directly into vessels and transported to the lower lake ports, where the same is delivered. By reason of the foregoing facts, it has been, is and will be in the future a matter of commercial necessity that practically all of the iron ore produced in Minnesota has been, is and will continue to be sent into interstate commerce.

These plaintiffs, before the beginning of the season of 1921 during which iron ore was shipped, namely at or shortly after the beginning of the year 1921, entered into numerous contracts (there being a separate contract covering the estimated output of each of the mines in Minnesota which it operated) with consumers of ore having furnaces in states other than Minnesota, whereby it agreed

to mine, sell and deliver to said consumers f. o. b. vessels at
411 specified ports on Lake Erie or Lake Michigan a stated number of tons of iron ore more or less from each of said mines. The quantity of ore stated in each contract was the estimated output of the mines covered by the contract for the year 1921, and it was the intention of the parties and the effect of the contract to cover all of the ore produced during said year from said mine. The ore produced by these plaintiffs from the properties hereinbefore described was produced pursuant to said contracts. The process of mining and transporting iron ore pursuant to said contracts is the same as that in vogue generally in Minnesota as above described.

The course of business described above, pursued by these plaintiffs during the year 1921 has been and is the course uniformly pursued by these plaintiffs and to be pursued in the year 1922 and in the future. By reason of the facts hereinabove alleged, the mining and producing of iron ore by these plaintiffs and by all of the persons engaged therein in the state of Minnesota is a part and incident of interstate commerce, and the tax imposed or attempted to be imposed by said Act is a direct interference with and burden upon interstate commerce as aforesaid.

12. If said act imposes a tax upon the occupation of mining and producing iron ore in the State of Minnesota, it violates the Fourteenth Amendment to the Constitution of the United States providing that no State shall deny to any person within its jurisdiction the equal protection of the laws, and violates Article IX, Section 1 of the Constitution of the State of Minnesota providing that taxes shall be uniform upon the same class of subjects by reason of the provisions of Section 2 of said act and of the facts alleged and the matters pleaded in section 9 hereof in connection with the
412 allegations that said tax violates said provisions as a tax upon property.

13. If said act is an act imposing a tax upon occupations it denies to these plaintiffs the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States and violates the provisions of Section 1, Article 9 of the Constitution of the State of Minnesota in that it singles out unreasonably and arbitrarily the business of mining iron ore and other ores, and imposes a tax thereon alone, discriminating against said occupation and unreasonably excluding from its operation other like occupations such as the mining and quarrying of rock, the digging of sand and gravel and also the business of those persons who may be and who in fact are engaged in removing overburden from open pit mines upon the Missabe Range in Minnesota.

14. If the tax imposed by said act is not a property tax as hereinbefore alleged and is an occupation tax then the same is invalid for the reason that the Constitution of the State of Minnesota does not permit the imposition of any tax upon occupations as a subject of taxation.

15. If the tax imposed by said act is not a tax upon property as hereinbefore alleged and not a tax upon occupation than it is a tax upon the income of persons engaged in the production of iron or other ores and does not impose a tax upon the income of any other person or class of persons or income derived from any other source, and there is no other class of income taxed in any manner under the laws of Minnesota. The constitution of the State of Minnesota does not permit the imposition of a tax upon income of one person or of one class of persons or upon income from a single source to be selected by the Legislature for the purpose of taxation and does not permit the imposition of any income tax whatsoever.

413 16. Said act further violates the Fourteenth Amendment of the Constitution of the United States in that it deprives all persons, including these plaintiffs, engaged in the business of mining or producing iron ore in the State of Minnesota of the equal protection of the laws and renders their property liable to be taken without due process of law, all in violation of the Fourteenth Amendment to the Constitution of the United States, in that the penalties fixed for the failure of said persons to make reports as provided in Section 3 of said Act and for failure to open for the inspection and examination of the Minnesota Tax Commission their books, waybills, inventories, correspondence and memoranda relating to or used in connection with their ownership or operation of a mine or mines in Minnesota and for failure to pay the tax imposed or sought to be imposed by said Act are so excessive as to intimidate, coerce and compel said persons, including these plaintiffs, to comply with the provisions of said Act without the freedom of resorting to the courts to test the validity of the provisions of said Act. The plaintiffs are informed and believe and on information and belief allege that the defendants acting as the Minnesota Tax Commission intend and threaten to levy and assess a tax against these plaintiffs and each of them or against said properties or against the iron ore mined and removed therefrom in a very large sum for the year 1921; that a penalty of 10% thereon will amount to a further large sum; that a penalty of 1% per month or 12% per year will amount to an additional large sum.

17. No provision is made in said Act for the refundment of any money paid as taxes pursuant to its provisions if it be finally found and determined that said Act is in fact unconstitutional and
414 void, and there is no provision in the Statutes of Minnesota or at common law giving to these plaintiffs or anyone the right or power to compel the State of Minnesota to refund money paid as taxes pursuant to said Act. The only way open to these plaintiffs in a court of law to test the constitutionality or validity of said Act is to refuse to comply with said Act and to refuse to pay the taxes which said Act purports to impose and thereby expose itself to the danger of being liable for the excessive penalties provided in said act. Therefore these plaintiffs have no plain, adequate and complete remedy at law.

18. If for the purpose of testing the constitutionality and validity of said Act, these plaintiffs refuse and decline to make such report on or before February 1st, or to pay said tax or otherwise to comply with said Act, they and their officers and agents may be and as these plaintiffs verily believe will be subjected to many suits brought by or on behalf of the State of Minnesota. The defendants constituting the Minnesota Tax Commission have, as hereinbefore alleged, required from these plaintiffs separate reports from each mine operated, and if said defendants proceed to determine a tax with reference to each mine (except where the operation of such mine was conducted at a loss or so that no taxable value is arrived at under said Act) and cause a draft to be drawn from the taxes so determined against each such mine, and said defendant Hilton, as Attorney General, brings suit on each of said drafts, there will result a multiplicity of suits against these plaintiffs. A criminal action may be brought against these plaintiffs' officers and agents as aforesaid by reason of failure to open for inspection and examination to the Minne-
415 sota Tax Commission its books, waybills, inventories, correspondence and memoranda as provided in Section 13 of said Act, and actions may be brought against these plaintiffs, in case they fail to pay the tax aforesaid for the year 1921 and for the succeeding years, for the collection of said tax as provided in said act. Therefore these plaintiffs, themselves and through their officers and agents, will be subjected to a multiplicity of suits.

19. If the plaintiffs are not granted immediate relief by this court of equity, defendants Lord, Armson and Halden, acting as the Minnesota Tax Commission, threaten to and will, as these plaintiffs believe, require or attempt to require shortly after February 1, 1922, these plaintiffs to open to said defendants for examination and inspection their books, waybills, inventories, correspondence and memoranda as provided in Section 13 of said Act, and if these plaintiffs' agents or officers having control of such papers and books shall neglect and refuse, on demand of said defendants acting as the Minnesota Tax Commission, to permit such examination and inspection, they will be guilty of a gross misdemeanor and punishable therefor. Further, if, for the purpose of testing the constitutionality and validity of said Act, these plaintiffs refuse to render the report required in Section 3 of said Act by February 1st, 1922, a penalty of ten per cent of the tax computed by the Minnesota Tax Commission will, under the provisions of Section 6 of said Act, be added to the tax. Therefore these plaintiffs are threatened with immediate and irreparable injury.

20. By reason of all of the foregoing facts set forth in this bill of complaint these plaintiffs are threatened with immediate and irreparable injury and a multiplicity of actions if this court of equity does not grant the relief herein prayed, and have and can have no plain, adequate and complete remedy at law.

416 Wherefore, these plaintiffs pray this Honorable Court for a judgment and decree against the defendants and each of them as follows:

1. To grant it to and against the defendants and each of them, individually or in their representative capacities as officers of the State of Minnesota, a temporary restraining order upon the filing of this complaint to be replaced by an interlocutory injunction to be granted by an enlarged court of three judges, pursuant to Section 266 of the Judicial Code of the United States, and that upon a final hearing, to be succeeded in turn by a permanent injunction restraining, enjoining and prohibiting said defendants, either as individuals or as representatives of the State of Minnesota, from acting under or in pursuance of or from in any way carrying out or enforcing the provisions of the Act of the Legislature of the State of Minnesota, being Chapter 223 of the Laws of Minnesota for 1921 and entitled "An Act providing for the imposition of a tax upon persons, copartnerships, companies, joint stock companies, corporations and associations however organized, engaged in the business of mining or producing iron ore and other ores, for enforcing and collecting the same, and prescribing penalties for the violation thereof."

2. To grant to these plaintiffs such other and further relief as this Honorable Court shall deem just and equitable.

HOWARD T. ABBOTT,
E. W. MACPHERRAN,
Solicitors for Plaintiffs.

1000 Alworth Building, Duluth, Minnesota.

ABBOTT, MACPHERRAN, GILBERT & DOAN,
Of Counsel.

417 STATE OF MINNESOTA,
County of St. Louis, ss:

E. W. MacPherran came before me personally, and being duly sworn, doth say that he is one of the attorneys for the Plaintiffs in the above entitled action; that the foregoing Bill of Complaint is true to the best of his knowledge, information and belief. That the reason why this affidavit is not made by officers of the plaintiffs or one of them is that said officers are all absent from said County of St. Louis; wherein said attorney resides.

E. W. MACPHERRAN.

Subscribed and sworn to before me this 27th day of January, A. D. 1922.

[SEAL.] GEORGE M. GILBERT,
Notary Public, St. Louis County, Minn.

My Commission expires June 7, 1922.

418-424 EXHIBIT "A."

Statement of Mines for Which Occupation Tax Reports for 1921 *Have Been Requested by Minnesota Tax Commission.*

Interstate Iron Company.

South Agnew Mine,	S. E. ¼ N. E. ¼	Section	11,	T.	57,	N. R. 21 W. Leasehold.
Lincoln Mine,	N. W. ¼ S. E. ¼	Section	4,	T.	58,	N. R. 17 W.
	S. ½ S. W. ¼	"	4,	"	"	" " 17 W.
	S. E. ¼ S. E. ¼	"	5,	"	"	" " 17 W. Leasehold.
Hill Annex Mine,	Entire Section		16,	"	56	N. R. 23 W. Leasehold.
Mississippi Mine,	N. E. ¼ N. E. ¼	Section	23,	"	57,	N. R. 22 W. Leasehold.
Grant Mine,	N. E. ¼ N. W. ¼	"	20,	"	58,	" " 19 W. Leasehold.
	S. ½ N. W. ¼	"	"	"	"	" " 19 W.
	N. W. ¼ S. W. ¼	"	"	"	"	" " 19 W.

Leetonia Mining Company.

Leetonia, Mine,	W. ½ N. E. ¼	Section	10,	T.	57,	N. R. 21 W. Leasehold.

425 Endorsed: Filed January 27, 1922. Joel M. Dickey, Clerk, by E. Catherine Neff, Deputy.

That on the 20th day of February, A. D. 1922, there was filed in the office of the Clerk of this Court the answer of defendants to the bill of complaint of Inter-State Iron Company, et al. in said action, which is in words and figur-s following, to-wit:

426 In the District Court of the United States, District of Minnesota, Fifth Division.

In Equity.

INTER-STATE IRON COMPANY and LEETONIA MINING COMPANY, Plaintiffs,

vs.

SAMUEL LORD, JAMES G. ARMSON, and ODIN HALDEN, Constituting The Minnesota Tax Commission; Clifford L. Hilton, Attorney General of Minnesota; Raymond P. Chase, State Auditor of Minnesota, and Henry Rines, State Treasurer of Minnesota, Defendants.

Answer to Bill of Complaint.

The above named defendants for their joint and several answers to the bill of complaint of plaintiffs in the above entitled cause, respectfully represent and state to the court as follows:

I.

The defendants admit the allegations of Paragraph 1, of said bill of complaint.

II.

Defendants admit the allegations of Paragraph 2, of said bill of complaint.

III.

Defendants admit that plaintiffs in this suit seek to enjoin said defendants from enforcing the provisions of a certain act of the legislature of the State of Minnesota, being Chapter 223, of the Laws of Minnesota for 1921, upon the ground of its unconstitutionality. Defendants admit that the taxes which plaintiffs would be required to pay for the year 1921 under said act, exceed the sum of $3,000.00, and that the matter in dispute in this suit exceeds, exclusive of interests and costs, the sum of $3,000.00.

427

Defendants expressly deny that this is a suit properly brought in equity and expressly deny that any sufficient ground for equitable relief is stated or exists, and defendants deny that said act is in violation of any provision of the constitution of the United States, or of the State of Minnesota.

IV.

Defendants admit the allegations of Paragraph 4, of said bill of complaint.

V.

Defendants admit the allegations of Paragraph 5, of said bill of complaint.

VI.

Defendants deny that said act, to-wit: Chapter 223, Laws 1921, is unconstitutional upon any of the grounds set forth in Paragraph 6 of the bill of complaint. Defendants admit that unless restrained they will enforce said law.

VII.

Defendants state that they have no knowledge as to the interest of the plaintiffs in the properties described in Exhibit A, attached to the bill of complaint, but defendants believe that plaintiffs' rights therein are correctly set forth in said Paragraph 7, of the bill of complaint, and defendants further believe that the plaintiffs are the persons who will be obliged to pay the tax arising out of the occupation of mining the properties described in said Exhibit A.

428

VIII.

Defendants deny all of the allegations of Paragraph 8 of the bill of complaint, except they admit that an ad valorem tax is imposed by the laws (Chap. 483, Laws 1913) of the state upon iron mines.

IX.

Defendants deny that said tax is a property tax or that it violates the fourteenth amendment to the Constitution of the United States, or that it violates Section 1, Article 9, of the Constitution of the State of Minnesota, in respect to any of the matters set forth in the various subdivisions of paragraph 9 of the bill of complaint, but allege on the contrary, that any difference in the cost of operating iron mines arises out of the circumstances and situation of the mine operators and their properties and that each and all of the provisions of said law therein referred to in respect to deductions from the cost of operating mines or otherwise are designed to and accomplish the purpose of imposing uniform and equal taxes upon all persons, copartnerships, joint stock companies and associations engaged in that business.

X.

Defendants repeat their denial that said law imposes a property tax. They deny that the process of mining and transporting ore is a continuous process and deny that plaintiffs' iron ore is mined and transported as set forth in Paragraph 10 of the bill of complaint. They allege that, except as to "wash ore" or so-called "low

grade ore," the manner and method of delivering the same for transportation, and for transporting same is as follows:

The plaintiffs have constructed and own railway tracks
429 running through and upon their open pit mines; that said plaintiffs own railway engines operated by their own employes; that the carrier operating the lines over which plaintiffs' ore is to be shipped from said open pit mines when called upon to do so by plaintiffs, sets out on its side tracks for use of plaintiffs such empty cars as plaintiffs may require; that thereupon plaintiffs, with their engines and through their employes, go upon the sidings of such carrier and take such empty cars into and upon such open pit mines, load such cars with ore, and thereafter deliver them at such railway side tracks to such carrier with directions as to their movement and destination.

That ore from underground mines is brought to the surface, through shafts, in "skips," so-called, to the shaft house. During a part of the year the ore is deposited in pockets at the shaft house for loading into railway cars. During the remainder of the year the ore is carried from the shaft house to a stock pile, there to await later loading into cars. That nearly 50% of the ore mined is so deposited in stock piles. The shaft house is reached by side tracks owned by carriers, which tracks lie directly beneath the pockets. Plaintiffs call upon the carrier to furnish such cars as it may require and these cars are set out upon such side tracks and plaintiffs' employes move such cars, usually one or two at a time, beneath the ore pockets, load such cars, assemble them when loaded, and notify carrier of their readiness for movement, and the carrier then takes such shipment to destination. Ore in stock pile is loaded by plaintiffs by steam shovels into cars similarly assigned by the carrier, and moved, assembled, and delivered by plaintiffs in substantially the same manner as are cars loaded from pockets.

That "wash ore" so-called, is taken from the mine, whether the same be an open pit mine or an underground mine, by plaintiffs through their employes, and upon their own cars drawn by
430 their own locomotives, and is carried and transported over their own railway tracks to a washing plant or concentrating plant, distant from one to five miles from such mines; it is there beneficiated by plaintiffs, that is, washed free of sand and other foreign substances, and thereafter such beneficiated ore, commonly called concentrates, is shipped by plaintiffs to furnaces in their usual course course of business.

Defendants deny that ore is the subject of interstate transportation from the time of its severance from the realty and deny that the tax imposed upon plaintiffs interferes with or burdens commerce in violation of Article 1, Section 8, of the Constitution of the United States as alleged in Paragraph number 10 of the bill of complaint.

XI.

Defendants deny that such tax is a direct interference with or a burden upon interstate commerce. Defendants, although having

no knowledge of the exact amount, admit that a very large percentage of the iron ore mined in Minnesota, after being mined, is, and for some time to come may be, shipped via the Great Lakes to so-called lower lake ports and there sold or delivered to furnace consumers.

Further answering the allegations of Paragraph 11, of the bill of complaint, the defendants reassert the allegations set forth in Paragraph 10, of this answer, which allegations relate to the manner of mining iron ore and the delivery thereof to the initial common carrier for transportation. Defendants state that they have no knowledge but believe to be true the allegations in Paragraph 11 of the bill of complaint relating to contracts covering the sale and delivery of the estimated output of each of plaintiffs' mines in Minnesota.

XII.

The defendants deny that said legislative act of Minne-
431 sota deprives the plaintiffs of the equal protection of the law guaranteed under the Fourteenth Amendment to the Constitution of the United States. Defendants deny that said law offends against the requirement as to uniformity provided for in Section 1, Article 9, of the Constitution of the State of Minnesota, as alleged in Paragraph 12 of the bill of complaint.

XIII.

Defendants deny that the legislative act in question, by singling out the business of mining ore, makes an illegal classification in violation of the Fourteenth Amendment to the Constitution of the United States or of Section 1, Article 9, of the State Constitution, and defendants allege that there is in Minnesota no other occupation or business similar to or like the business of mining or producing iron ore or other ores.

XIV.

Defendants deny the allegations of Paragraph number 14 of the bill of complaint.

XV.

Defendants deny that the tax imposed by the act in question is an income tax and, on the contrary, they allege that it is the purpose and effect of said statute to impose a business or occupation tax upon plaintiffs based upon the amount of ore produced, which tax is equalized and made uniform by basing the tax upon the value of the ore produced and by allowing certain deductions therefrom, which deductions are principally designed to equalize the tax upon underground mining and the tax upon open pit mining. That mining or producing ore from an underground mine is widely different from mining or producing ore from an open pit mine. The

ore in underground mines lies at a considerable depth below the surface of the earth; shafts are sunk to the ore bodies; tunnels or drifts are driven at different levels into the ore bodies and the ore thus reached is separated and brought to the mouth of the shaft
432 by manual labor. The amount of ore which may be extracted from an underground mine in a given time is restricted by the limitations of space and openings thus imposed. The ore in open pit mines lies near the surface of the earth; the over burden of the ore is stripped off the ore bodies and thereafter the operation is simply one of separating the ore by means of steam shovels and loading it into cars brought into the pit of the mines as hereinbefore described. The cost of producing a ton of ore from an underground mine greatly exceeds the cost of procuring a ton of ore of like quality from an open pit mine.

XVI.

Defendants deny that said act violates the "equal protection" or "due process of law" provisions of the Fourteenth Amendment to the Constitution of the United States and defendants deny that the penalties (prescribed by said act) are excessive or are such as to intimidate or coerce plaintiffs as alleged in Paragraph 16 of the bill of complaint. Defendants further state that they have no knowledge or belief as to the amount of the tax which under said law will be imposed upon the plaintiffs.

XVII.

Defendants deny that the plaintiffs have no plain, adequate and complete remedy at law because of the penalties provided for in said act, and in that connection defendants allege that the prescribed penalties are not more severe than are ordinarily and usually provided for in taxation laws.

XVIII.

Defendants deny that if plaintiffs, for the purpose of testing the constitutionality and validity of said act, refuse and neglect to comply with the requirements thereof, they and their officers and agents may be, or will be, subjected to many suits brought by or on behalf of the state of Minnesota. Defendants admit that the Min-
433 nesota Tax Commission has requested these plaintiffs as to each property being mined by them to file the report required by Section 3 of said act. Defendant Hilton as attorney general denies that he intends or proposes to bring separate actions against plaintiffs on account of each of their mines, and alleges that said Chapter 223, Laws 1921, contemplates but a single action against plaintiffs if they shall fail to pay taxes assessed against them thereunder, and defendant Attorney General Hilton alleges that he will commence and prosecute against plaintiffs only the single suit provided for in said act.

XIX.

Defendants admit the allegations of Paragraph 19, of the bill of complaint, except they expressly deny that the plaintiffs are threatened with immediate and irreparable injury.

XX.

Defendants deny that the plaintiffs are threatened with immediate and irreparable injury and a multiplicity of suits. They deny that the plaintiffs have no plain, adequate and complete remedy at law as alleged in Paragraph 20 of the bill of complaint.

Having thus made a full answer to all the matters and things contained in the bill, the defendants pray that the bill be dismissed and for judgment for their costs in this behalf incurred.

CLIFFORD L. HILTON,
Attorney General;
EGBERT S. OAKLEY,
Deputy Attorney General;
MONTREVILLE J. BROWN,
Assistant Attorney General,
Solicitors for Defendants.

102 State Capitol, St. Paul, Minn.

434 STATE OF MINNESOTA,
County of Ramsey, ss:

Samuel Lord, being first duly sworn, says that he is one of the defendants named in the bill of complaint herein; that he has read the foregoing answer and knows the contents thereof and that the same is true of his own knowledge, except as to matters therein stated upon information and belief, and as to those matters he believes it to be true.

SAMUEL LORD.

Subscribed and sworn to before me February 18, 1922.
[SEAL.] (G. K. SPANGENBERG,)
Notary Public, Ramsey County, Minnesota.

My Commission expires March 11, 1922.

Endorsed: Filed February 20, 1922. Joel M. Dickey, Clerk, by J. C. Herman Engel, Deputy.

435 In the District Court of the United States, District of Minnesota, Fifth Division.

OLIVER IRON MINING COMPANY, Plaintiff,

v.

SAMUEL LORD et al., Defendants.

Citation on Appeal.

UNITED STATES OF AMERICA:

To Samuel Lord, James G. Armson, Odin Halden, Clifford L. Hilton, Raymond P. Chase, and Henry Rines, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States in the City of Washington thirty days after this citation bears date, pursuant to order allowing appeal filed in the Clerk's office of the District Court of the United States for the District of Minnesota, Fifth Division, wherein the Oliver Iron Mining Company is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant as in said order allowing appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Tillman D. Johnson, District Judge of the United States for the District of Utah acting for the District of Minnesota this 15th day of July, in the year of our Lord one thousand nine hundred and twenty-two.

TILLMAN D. JOHNSON,
United States District Judge.

436-452 [Endorsed:] Equity No. 72-E. Original. In the District Court of the United States District of Minnesota, Fifth Division. Citation on Appeal. Oliver Iron Mining Company, Plaintiff, vs. Samuel Lord et al., Defendants. Filed July 21, 1922. Joel M. Dickey, Clerk, by E. Catherine Neff, Deputy.

Due and personal service of the within citation is hereby admitted this 20th day of July, 1922, for and on behalf of all of the defendants herein.

CLIFFORD L. HILTON,
EGBERT S. OAKLEY,
PATRICK J. RYAN,
Solicitors for Defendants.

* * * * * * *

453 In the District Court of the United States, District of Minnesota, Fifth Division.

BENNETT MINING COMPANY et al., Plaintiffs,

vs.

SAMUEL LORD et al., Defendants.

INTERSTATE IRON COMPANY et al., Plaintiffs,

vs.

SAMUEL LORD et al., Defendants.

OLIVER IRON MINING COMPANY, Plaintiff,

vs.

SAMUEL LORD et al., Defendants.

THE BIWABIC MINING COMPANY et al., Plaintiffs,

vs.

SAMUEL LORD et al., Defendants.

THE CLEVELAND-CLIFFS IRON COMPANY, Plaintiff,

vs.

SAMUEL LORD et al., Defendants.

THE MESABA-CLIFFS IRON COMPANY, Plaintiff,

vs.

SAMUEL LORD et al., Defendants.

REPUBLIC IRON & STEEL CO. et al., Plaintiffs,

vs.

SAMUEL LORD et al., Defendants.

Stipulations for Transcript.

454 It is hereby stipulated and agreed that the Clerk of this Court shall incorporate in the transcript of the record on the appeal of the above entitled causes to the Supreme Court of the United States the following:

1. The bills of complaint.
2. The answers.
3. The temporary restraining order.

4. Stipulation continuing temporary restraining order and waiving hearing on interlocutory injunction.

5. Transcript of evidence, including agreed statement of facts, statement of evidence, and exhibits offered in evidence.

6. Memorandum Opinion of the Court.

7. Order for Decree.

8. Decree.

9. Petition for appeal, together with order allowing same and continuing temporary restraining order in effect.

10. Assignments of error.

11. Citation.

12. Stipulation for transcript of record.

It is stipulated that one copy only of Nos. 3 to 12 inclusive shall be incorporated in said transcript on appeal, the form thereof being the same in each of the above entitled causes.

WILLIAM D. BAILEY,
OSCAR MITCHELL,
ALBERT C. GILLETT,
Solicitors for Bennett Mining Company et al., Plaintiffs; Republic Iron & Steel Company et al., Plaintiffs.
A. L. AGATIN,
HOWARD T. ABBOTT,
E. W. MacPHERRAN,
Solicitors for Interstate Iron Company et al., Plaintiffs; The Biwabic Mining Company et al., Plaintiffs.
C. A. SEVERANCE,
GEORGE W. MORGAN,
Solicitors for Oliver Iron Mining Company, Plaintiff.
H. J. GRANNIS,
Solicitor for the Cleveland-Cliffs Iron Company, Plaintiff; The Mesaba-Cliffs Iron Company, Plaintiff.
CLIFFORD L. HILTON,
EGBERT S. OAKLEY &
PATRICK J. RYAN,
Solicitors for Defendants.

455 United States District Court, District of Minnesota, Fifth Division.

I, Joel M. Dickey, Clerk of said District Court, do hereby certify and return to the Honorable, the Supreme Court of the United States, that the foregoing, consisting of 455 pages, numbered con-

secutively from 1 to 455 inclusive, is a true and complete transcript of all the records, process, pleadings, orders and final decrees and all other proceedings in each of said causes and of the whole thereof, as appears from the original records and files of said Court, and in accordance with a præcipt for such transcript, a copy of which is included within said paging; and I do further certify and return that I have annexed to said transcript and included within said paging the original citation in each of said causes, together with the admission of service on each thereof.

In witness whereof, I have hereunto set my hand as the Clerk aforesaid and affixed the seal of said Court at Duluth, in the District of Minnesota, this 10th day of August, A. D. 1922.

[Seal U. S. Dist. Court, Dist. of Minnesota, Fifth Division.]

JOEL M. DICKEY,
Clerk,
By E. CATHERINE NEFF,
Deputy.

456 The Supreme Court of the United States, October Term, 1922.

OLIVER IRON MINING COMPANY, Appellant,

vs.

SAMUEL LORD et al., Appellees.

THE BIWABIK MINING COMPANY et al., Appellants,

vs.

SAMUEL LORD et al., Appellees.

BENNETT MINING COMPANY et al., Appellants,

vs.

SAMUEL LORD et al., Appellees.

THE CLEVELAND-CLIFFS IRON COMPANY, Appellant,

vs.

SAMUEL LORD et al., Appellees.

THE MESABA-CLIFFS IRON MINING COMPANY, Appellant,

vs.

SAMUEL LORD et al., Appellees.

REPUBLIC IRON & STEEL COMPANY et al., Appellants,

vs.

SAMUEL LORD et al., Appellees.

INTERSTATE IRON COMPANY et al., Appellants,

vs.

SAMUEL LORD et al., Appellees.

457 *Stipulation for Printing Record.*

It is hereby stipulated by counsel of the respective parties, in the above named causes, that the entire record therein as returned to and filed in this Court, shall be printed, with the following exceptions:

1. Exhibit "A" attached to the bills of complaint of the following named appellants, to wit: The Cleveland-Cliffs Iron Company, The Mesaba-Cliffs Iron Mining Company, Bennett Mining Company et al., and Republic Iron & Steel Company et al.; Exhibit "B" attached to the bills of complaint of the appellants The Biwabik Mining Company et al., and Interstate Iron Company et al.; said Exhibits A and B consist of "Form of Occupation Tax Return," of which Exhibit B attached to the bill of complaint of the Oliver Iron Mining Company, which is to be printed, is an exact copy.

2. All Citations included in the record, except the Citation issued on behalf of the appellant Oliver Iron Mining Company, which is in the same form as all of the other Citations.

C. A. SEVERANCE,
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F. D. ADAMS,
E. F. BLUE,
Counsel for Appellant Oliver Iron Mining Company.

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CLIFFORD L. HILTON,
EGBERT S. OAKLEY,
PATRICK J. RYAN,
Counsel for Appellees in each of the Above-entitled Causes.

458 & 459 [Endorsed:] The Supreme Court of the United States October Term, 1922. Oliver Iron Mining Company, Appellant, vs. Samuel Lord et al., Appellees, and six other cases. Stipulation for Printing Record.

460 [Endorsed:] File No. 29110, &c. Supreme Court U. S., October Term, 1922. Term No. 560 & 566. Oliver Iron Mining Co., Appellant, vs. Samuel Lord, et al. (and 6 other cases). Stipulation as to parts of record to be printed. Filed Sept. 1, 1922.

Endorsed on cover: File Nos. 29,110, 29,111, 29,112, 29,113, 29,114, 29,115, 29,116. Minnesota U. S. D. C. No. 560. Oliver Iron Mining Company, appellant, vs. Samuel Lord et al. No. 561. Cleveland-Cliffs Iron Company, appellant, vs. Samuel Lord et al. No. 562. Mesaba-Cliffs Iron Mining Company, appellant, vs. Samuel Lord et al. No. 563. Bennett Mining Company et al., appellants, vs. Samuel Lord et al. No. 564. Republic Iron & Steel Company et al., appellants, vs. Samuel Lord et al. No. 565. The Biwabik Mining Company et al., appellants, vs. Samuel Lord et al. No. 566. Inter-State Iron Company, appellant, vs. Samuel Lord et al. Filed August 28th, 1922. File Nos. 29,110, 29,111, 29,112, 29,113, 29114, 29,115, 29,116.

Attention is called to a copy of the law printed
on the back of this blank.

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EXHIBIT B

Form No. 37 M. T. C.

Occupation Tax Report

OF

_____

Made pursuant to the provisions of Chapter 223, General Laws of 1921.

COVERING OPERATIONS OF THE

_____ **Mine**

For the calendar year ending December 31st, 1921.

Filed with the

MINNESOTA TAX COMMISSION

On the_____day of_____1922

Attention is called to a copy of the law printed on the back of this blank.

To the.....

Address.....

Pursuant to the provisions of Section 3, Chapter 223, General Laws of Minnesota for 1921, you are requested to file with the Minnesota Tax Commission on or before February 1, 1922, a verified report for the calendar year 1921, giving complete information in answer to the questions hereinafter enumerated, with reference to mining operations on the tracts and parcels of land lying and being in the county of.....and State of Minnesota, described as follows, towit: .....

.....

.....

.....

.....

.....

....., (known as the.....mine).

You are also requested to file with your report, if you have not already done so, blue prints, plan maps, cross sections and any other data, showing the full extent of all stripping, underground or other development work on the above described property.

By order of the Minnesota Tax Commission.

.....
Secretary.

Dated at St. Paul, Minnesota, this 3rd day of January, 1922.

To the Minnesota Tax Commission,
State Capitol,
St. Paul, Minnesota.

Gentlemen:

In compliance with your order of January 3rd, 1922, we submit herewith a verified report for the calendar year 1921, giving detailed information with reference to mining operations on the tracts and parcels of land lying and being in the county of....., and State of Minnesota, described as follows, towit:.....

.....

.....

.....

.....

.....

.....

(known as the.....mine).

Yours very truly,

.....

By .....

1. Give nature of interest in property Fee..... Leasehold.....

2. Character of operation: Open pit..... Underground..... Milling.....

3. Give total amount of ore mined during the calendar year 1921, from each of the above descriptions in detail as indicated below:

1 Description	2 Open pit Operations Tons	3 Underground Operations Tons	4 Milling Operations Tons	5 Total Tonnage Mined
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
Grand total	.....	.....	.....	.....

4. Give grade, tonnage and average analysis of ore mined

Grade	Average Analysis				
	Nat. Iron %	Dry Phos. %	Mn. %	Si. %	Moist. %
Bessemer .....tons	.....	.....	.....	.....	.....
Non Bessemer .....tons	.....	.....	.....	.....	.....
Manganiferous .....tons	.....	.....	.....	.....	.....
Total .....tons	.....	.....	.....	.....	.....

5. Give disposition of tonnage mined during the calendar year 1921, showing:

A. Number of tons sold .....tons

B. Number of tons otherwise disposed of .....tons

C. Number of tons remaining in stock pile .....tons

D. Total .....tons

6. Give place of sale, grade and number of tons sold, together with the total amount and average price per ton of ore mined and sold during the calendar year 1921, showing:

1 Place of Sale	2 Grade and Number of tons sold	3 Total amount sold for	4 Average price per ton
.....	Bessemer.....	$.....	$.....
.....	Non Bessemer.....	.....	.....
.....	Manganiferous.....	.....	.....
Total	.....	.....	.....

7. Give the average Lake Erie price per ton, and total market value of ore disposed of during 1921, other than by direct sale, showing:

1 Grade and tonnage	2 Average price per ton	3 Total market value
Bessemer .....Tons	$.....	$.....
Non Bessemer .....Tons	.....	.....
Manganiferous .....Tons	.....	.....
Total .....Ton	.....	.....

8. Give the average Lake Erie price per ton and total market value of ore mined in 1921 and remaining in stock pile, or if the ore had no market value when mined and placed in the stock pile, then give the actual value per ton when mined and total value of such ore, showing:

1	2					3	4	5
Grade	Analysis					No. of tons in stock pile	Average Lake Erie price or value per ton	Total market or actual value of ore in stock pile
	Nat. Iron %	Phos. dry %	Si. %	Mn. %	Moist %			
Bessemer							$	$
Non Bessemer								
Manganiferous								
Total								

9. Give the extent and cost of all development work on property, showing:

1. If open pit operation:
   - A. Total number of cubic yards of overburden removed - - - - - - - .....
   - B. Total cost of removing the same - - - - - - - - - - - - - - $.....
   - C. Average cost per cubic yard - - - - - - - - - - - - - - - $.....
   - D. Total number of tons of ore uncovered and made available for mining within the stripped area. - - - - - - - - - - - - - - - - - - .....
   - E. Average stripping cost per ton for ore uncovered - - - - - - - - $.....

2. If underground operation:
   - A. Cost of shaft - - - - - - - - - - - - - - - - - - $.....
   - B. Cost of drifting - - - - - - - - - - - - - - - - - $.....
   - C. Total cost - - - - - - - - - - - - - - - - - - $.....
   - D. Total number of tons of ore made available or that can be made available for advantageous mining through shaft - - - - - - - - - - - - .....
   - E. Total number of tons of ore made available for mining through drifts - - - .....
   - F. Average cost per ton:
     1. Shaft - - - - - - - - - - - - - - - - - - $.....
     2. Drifts - - - - - - - - - - - - - - - - - - $.....
     3. Total - - - - - - - - - - - - - - - - - - $.....

3. If milling or mixed operation:
   - A. Total number of cubic yards of overburden removed - - - - - - - .....
   - B. Total cost of removing the same - - - - - - - - - - - - - - $.....
   - C. Average cost per cubic yard - - - - - - - - - - - - - - - $.....
   - D. Total number of tons of ore uncovered and made available for mining within the stripped area by open pit operation - - - - - - - - - - - .....
   - E. Average stripping cost per ton for ore uncovered - - - - - - - - $.....
   - F. Cost of shaft - - - - - - - - - - - - - - - - - - $.....
   - G. Cost of drifting - - - - - - - - - - - - - - - - - $.....
   - H. Total cost of underground development - - - - - - - - - - - $.....
   - I. Total number of tons of ore made available or that can be made available for advantageous mining through shaft - - - - - - - - - - - .....
   - J. Total number of tons of ore made available for mining through drifts - - - .....
   - K. Average cost per ton:
     1. Shaft - - - - - - - - - - - - - - - - - - $.....
     2. Drifts - - - - - - - - - - - - - - - - - - $.....
     3. Total - - - - - - - - - - - - - - - - - - $.....
   - L. Total cost of development all operations - - - - - - - - - - $.....
   - M. Total number of tons of ore made available or that can be made available for advantageous mining by all operations - - - - - - - - - - .....
   - N. Total average cost per ton all operations - - - - - - - - - - $.....

10. Total cost and cost per ton of mining ore during the calendar year 1921, as the same appear in detail under items 13 to 27 on page 5 of this report.

    Total cost - - - - - - $.....
    Cost per ton - - - - - $.....

11. Total amount of realty taxes levied upon the above descriptions for the year 1921, exclusive of special assessments - - - - - - - - - - - - - - - - - -

Detailed cost of mining and producing ore during the calendar year 1921.

		Average cost per ton	Total cost
12.	Total tonnage mined .....tons.		
13.	Cost of development as shown in answer to question 9	$.....	$.....
14.	**Mining cost**		
	A. Labor		
	B. Supplies		
	C. Local administration		
15.	Loading ore from stock pile		
16.	**Beneficiation of ore**		
	A. Washing		
	B. Drying		
17.	Depreciation of plant		
18.	Local administration, general office accounts		
19.	Royalty		
	TOTAL AND AVERAGE PER TON OF MINING COSTS		
20.	**Transportation**		
	A. Rail freight		
	B. Vessel freight		
	C. Federal tax on items A and B		
	D. Marine insurance		
	E. Commissions		
	F. Cargo analysis		
	G. Vessel unloading		
	H. Shrinkage		
	TOTAL TRANSPORTATION		
	TOTAL COSTS ITEMS 13 to 20		
21.	Cost adjustment		
22.	Fire insurance		
23.	Contingent fund provision		
24.	General administration		
25.	Depletion (amortization of ore)		
26.	Taxes		
	A. Minnesota		
	B. Federal		
27.	Costs not expressly enumerated in items 21-26		
	A.		
	B.		
	GRAND TOTALS		

Remarks:

.....

.....

.....

.....

.....

.....

.....

State of .....
County of ..... } ss

I, ...do solemnly swear that I am the.....
(official title)

of the.....; that the foregoing report was made by me, or under my supervision, and
(operating company)
that the matters therein set forth have been transcribed from the records of this Company and are true and correct to the best of my knowledge and belief.

.....

Subscribed and sworn to before me this..... day of.....1922.

Notary public.....

My commission expires.....192.....

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CHAPTER 223—H. F. No. 760.

An act providing for the imposition of a tax upon persons, co-partnerships, companies, joint stock companies, corporations, and associations however organized engaged in the business of mining or producing iron ore and other ores, for enforcing and collecting the same and prescribing penalties for the violation thereof.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. **Occupation tax of 6% on iron ore.**—Every person engaged in the business of mining or producing iron ore or other ores in this state shall pay to the state of Minnesota an occupation tax equal to 6 per cent of the valuation of all ores mined or produced, which said tax shall be in addition to all other taxes provided for by law, said tax to be due and payable from such person on May 1 of the year next succeeding the calendar year covered by the report thereupon to be filed as hereinafter provided.

Sec. 2. **Value of ore—How ascertained.**—The valuation of iron or other ores for the purposes of determining the amount of tax to be paid under the provisions of Section 1 of this act shall be ascertained by subtracting from the value of such ore at the place where the same is brought to the surface of the earth, such value to be determined by the Minnesota tax commission:

1. The reasonable cost of separating the ore from the ore body, including the cost of hoisting, elevating, or conveying the same to the surface of the earth.

2. If the ore is taken from an open pit mine, an amount for each ton of ore mined or produced during the year equal to the cost of removing the overburden, divided by the number of tons of ore uncovered, the number of tons of ore uncovered in each such case to be determined by the Minnesota Tax Commission.

3. If the ore is taken from an underground mine, an amount for each ton of ore mined or produced during the year equal to the cost of sinking and constructing shafts and running drifts, divided by the number of tons of ore that can be advantageously taken out through such shafts and drifts, the number of tons of ore that can be advantageously taken out in each such case to be determined by the Minnesota Tax Commission.

4. The amount of royalties paid on the ore mined or produced during the year.

5. A percentage of the ad valorem taxes levied for said year against the realty in which the ore is deposited equal to the percentage that the tons mined or produced during such year bears to the total tonnage in the mine.

6. The amount or amounts of all the foregoing subtractions shall be ascertained and determined by the Minnesota Tax Commission.

Sec. 3. **Mining companies to report annually.**—Every person engaged in such mining or production of ores shall, on or before the first day of February, 1922, and annually thereafter on or before the first day of February of each year, file with said commission under oath a correct report in such form and containing such information as the tax commission may require, covering the preceding calendar year.

Sec. 4. **Tax commission to determine tax.**—Upon receipt by the Minnesota tax commission of such report it shall determine from such information as it may possess or obtain whether the same is correct or otherwise, and if found correct, said tax commission shall, on or before May 1, find and determine therefrom the amount of tax due from such person.

Sec. 5. **Same when report is incorrect.**—Upon receipt by the Minnesota tax commission of such report it shall determine from such information as it may possess or obtain whether the same is correct or otherwise, and if found incorrect, from such information as it may possess or obtain, it shall find and determine the amount of tax due from such person.

Sec. 6. **Procedure when no report is filed—Penalty for failure to report.**—If any person, subject to this act, shall fail to make the report provided for in section 3 hereof at the time and in the manner therein provided, the tax commission shall in such case, upon such information as it may possess or obtain, ascertain the kind and amount of ore mined or produced, together with the valuation thereof, and shall thereon find and determine the amount of the tax due from such person, and there shall be added thereto a penalty for failure to report, which penalty shall equal ten per cent of the tax imposed and shall be treated as a part thereof.

Sec. 7. **Determination by tax commission of amount of tax shall be prima facie evidence.**—Findings and determination by the Minnesota tax commission, as to the amount of [illegible] due under the provisions of this act, shall be in all courts, for all purposes, prima facie evidence of the facts therein stated.

Sec. 8. **Tax commission shall certify amount of tax to state auditor.**—The Minnesota tax commission shall enter on its records the amount of taxes found and determined by it to be due from any person, as herein provided, and on or before May 1 shall certify such amount to the state auditor; who thereupon shall make his draft upon such person for the amount of taxes as thus certified, and place the same in the hands of the state treasurer for collection.

Sec. 9. **Due before June 1st each year—Penalties for non-payment.**—In case the tax herein provided for is not paid before the first day of June of the year when due and payable, a penalty of ten per cent thereof shall immediately accrue, and thereafter one per cent per month shall be added to such tax and penalty while such tax remains unpaid.

Sec. 10. **State auditor's draft prima facie evidence of amount due.**—The draft of the state auditor for the tax or tax and penalties imposed by the foregoing provisions of this act shall be prima facie evidence in any court where proceedings may be brought for its enforcement that the amount therein stated is due the state from the person against whom the same is drawn.

Sec. 11. **Attorney general to collect unpaid drafts.**—On July 1 of each year the state treasurer shall deliver to the attorney general all unpaid drafts for taxes imposed under this act, and it shall be the duty of the attorney general to bring an action thereon in the district court of Ramsey County, or of the county where such ores are mined or produced, for the amount of such draft, together with interest, penalties and costs. The judgment of the court when so obtained shall bear interest at the rate of one per cent per month and be enforceable in the manner provided by law for the enforcement of judgments obtained in civil actions.

Sec. 12. **Penalty for false return.**—Any person who for the purpose of evading the payment of the tax hereinbefore provided, or any part thereof, makes any false return or report under Section 3 hereof, shall pay to the state a penalty of fifty per cent of the amount of said tax; and any one who shall knowingly make or sign under oath any false return of the kind and amount of ores produced therefrom, and of the value thereof, or who shall knowingly submit any other false information required by this act, shall be deemed guilty of perjury, and upon conviction thereof shall be punished therefor as provided by law.

Sec. 13. **Records of companies to be open to inspection.**—All books, waybills, inventories, correspondence and memoranda relating to or used in the transaction of the business of any person owning or operating any such mine or mines, shall on demand by the Minnesota tax commission or its authorized representatives, be open to its inspection or examination. If any one having charge, control or possession of said papers and books of such person shall neglect or refuse on demand of the said tax commission or its authorized representatives access to the papers and books aforesaid, he or they shall be deemed guilty of a gross misdemeanor, and upon conviction thereof shall be punished therefor as provided by law.

Sec. 14. **Taxes to be credited to general revenue fund.**—All taxes imposed and collected under the foregoing provisions of this act shall be paid into the state treasury and credited to the general revenue fund.

Sec. 15. **Unconstitutionality of one section not to affect others.**—Should the courts declare any section or provision of this act unconstitutional or unauthorized or in conflict with any other section or provisions of this act, then such decision shall affect only the section or provision declared to be unconstitutional or unauthorized and shall not affect any other section or part of this act.

Sec. 16. **Definitions.**—For all purposes of this act the word "person" shall be construed to include individuals, co-partnerships, companies, joint stock companies, corporations, and all associations however and for whatever purpose organized.

Sec. 17. This act shall take effect and be in force from and after its passage.

Approved April 11, 1921.

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FILED
NOV 29 1922
WM. R. STANSB
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 560.
OLIVER IRON MINING COMPANY, Appellant,
vs.
SAMUEL LORD ET AL.

No. 561.
CLEVELAND-CLIFFS IRON COMPANY, Appellant,
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vs.
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No. 566.
INTER-STATE IRON COMPANY, Appellant,
vs.
SAMUEL LORD ET AL.

BRIEF ON BEHALF OF APPELLANTS.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 560.

OLIVER IRON MINING COMPANY, *Appellant*,

vs.

SAMUEL LORD ET AL.

No. 561.

CLEVELAND-CLIFFS IRON COMPANY, *Appellant*,

vs.

SAMUEL LORD ET AL.

No. 562.

MESABA-CLIFFS IRON MINING COMPANY, *Appellant*,

vs.

SAMUEL LORD ET AL.

No. 563.

BENNETT MINING COMPANY ET AL., *Appellants*,

vs.

SAMUEL LORD ET AL.

No. 564.

REPUBLIC IRON & STEEL COMPANY et al., *Appellants*,

vs.

SAMUEL LORD ET AL.

No. 565.

THE BIWABIK MINING COMPANY ET AL., *Appellants*,

vs.

SAMUEL LORD ET AL.

No. 566.

INTER-STATE IRON COMPANY, *Appellant*,

vs.

SAMUEL LORD ET AL.

BRIEF ON BEHALF OF APPELLANTS.

STATEMENT OF THE CASE.

These are seven separate suits in equity involving the constitutionality of Chapter 223 of the Laws of Minnesota, 1921 (printed as Appendix A hereto), under which the State of Minnesota threatens to exact from the appellants in the guise of taxes large sums of money amounting to upwards of $1,000,000.00 for the year 1921 from the appellant Oliver Iron Mining Company alone (which happens to be the largest operator) and normally amounting to upwards of $2,000,000.00 annually from the one company.

The thirty-seven appellants, who comprise nearly all of the companies engaged in the mining of iron ore in Minnesota, filed their bills of complaint praying that the appellees, who are the Tax Commission, the Attorney General, the State Auditor and the State Treasurer of Minnesota, be restrained from enforcing or carrying out the provisions of the Act. A temporary restraining order was granted, a hearing before three judges was waived by all parties, the restraining order was continued in effect until hearing and determination upon the merits, and the cases were consolidated for trial and tried in April, 1922, before the Honorable Tillman D. Johnson, District Judge, who shortly thereafter filed a brief opinion (p. 81) holding the Act valid, in which he stated that he understood the parties were more interested in an immediate de-

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Unless otherwise stated, figures in parentheses refer to pages of the printed record. Italics are our own, wherever employed, except when otherwise stated.

cision than in an elaborate opinion (p. 82), and did not in that opinion in any detail consider or discuss the contentions of either the appellants or appellees.

The appellants took their appeals from the decrees in the several cases dismissing the respective bills of complaint. The District Court, pending the determination of these appeals, enjoined the enforcement of the law. The cases are now before this court upon one record and all involve substantially the same questions.

THE STATUTE.

Chapter 223 is entitled, "An act providing for the imposition of a tax upon persons, co-partnerships, companies, joint stock companies, corporations, and associations however organized engaged in the business of mining or producing iron ore and other ores, for enforcing and collecting the same and prescribing penalties for the violation thereof." Section 1 is as follows:

> "Occupation tax of 6% on iron ore—Every person engaged in the business of mining or producing iron ore or other ores in this state shall pay to the state of Minnesota an occupation tax equal to 6 per cent of the valuation of all ores mined or produced, which said tax shall be in addition to all other taxes provided for by law, * * *."

Section 2 prescribes that the valuation of iron ore for taxation purposes shall be ascertained by subtracting from the value of such ore at the place

where the same is brought to the surface of the earth certain items, namely:

1. The reasonable cost of separating the ore from the ore body.

2. If taken from an open pit mine an amount for each ton of ore mined or produced during the year equal to the cost of removing the overburden divided by the number of tons of ore uncovered.

3. If taken from an underground mine an amount for each ton of ore mined or produced during the year equal to the cost of constructing shafts and running drifts, divided by the number of tons of ore that can be advantageously taken out.

4. The amount of royalties paid on the ore mined or produced during the year.

5. A percentage of the ad valorem taxes levied for said year against the realty in which the ore is deposited equal to the percentage that the tons mined or produced during such year bears to the total tonnage in the mine.

These amounts are to be determined by the Minnesota Tax Commission.

The remainder of the Act for the most part consists of provisions as to the furnishing of reports and information to the Tax Commission, and the method of assessing, certifying and collecting the tax and prescribes the duties of the various state officers. It might be noted that among the other provisions is Section 13 which very drastically provides that all the records of the mine operators shall be open to inspection and for heavy penalties if inspection is refused.

The facts naturally group themselves under the various points of the argument and we will not therefore attempt any statement of them at this place.

SPECIFICATIONS OF ERRORS RELIED ON.

The errors assigned and relied upon here may be grouped under the following points:

1. The court erred in dismissing plaintiff's bill of complaint and entering a decree for the defendants (Assignments 1. 16).

2. The court erred in holding that the tax imposed by Chapter 223, Laws of Minnesota 1921, is not a burden upon and interference with interstate commerce in violation of the provisions of the Constitution of the United States (Assignments 2, 3, 7, 8, 9).

3. The court erred in holding that the tax so imposed is not obnoxious to section 1 of Article 9 of the Constitution of the State of Minnesota requiring that taxes shall be uniform upon the same class of subjects (Assignments 5, 12, 13, 15).

4. The court erred in holding that the tax so imposed is not in violation of the provisions of the 14th amendment to the Constitution of the United States securing to all persons the equal protection of the laws (Assignments 3, 6, 10, 11).

ARGUMENT.

Before taking up the points of our argument separately, the following brief outline will inform the court generally regarding our position.

We contend that a tax upon the occupation of mining iron ore under the facts of this case is invalid.

We will show that although mining in and of itself has been held by this court not to be interstate commerce, yet mining as conducted by appellants, as shown by the record in this case, is interstate commerce or so intimately connected therewith that a tax thereon is a direct burden upon and an interference with interstate commerce.

We will invite the court's attention to the fact that before ore is mined, contracts for sale thereof are made providing for the mining and the transportation and delivery thereof to points outside the State of Minnesota; that this is true as to all but an insignificant portion, namely about 2% of all ore mined; that it is inevitable from the location of the market for the consumption of ore and from commercial necessity, well known to all parties concerned before the ore is mined, that when mined it must, except as to the negligible percentage referred to, be shipped to points outside the state and that this is the constantly recurring course of commerce; that the act of mining itself, subsequent as it is to the making of such contracts, may thus be said to be the second step in the course of interstate

commerce, as well as a step precedent, and in the words of the late Chief Justice White (in Heyman v. Hays, infra) an "essential prerequisite to the initiation of an interstate commerce shipment," if not actually a part of the interstate transportation of the ore. Further, we will call attention to the history of the times and the legislative environment as evidenced by the reports of the Minnesota Tax Commission, the messages of Governors and bills previously introduced to show that the intent of the legislature, as well as the effect of the act, clearly was to burden interstate commerce.

Upon all these facts under the authorities of this court it is our contention that the operation of mining here in question is a part and incident of interstate commerce and that therefore a tax thereon is invalid.

As a property tax it is invalid for the further reason that the iron ore which is taxed is mined iron ore which has started on its way in interstate commerce.

Considered as an occupation tax, we urge that the tax is invalid for the further reason that the *classification* prescribed by the act is without reason or justification in fact, because it includes only those operators mining or removing ore who have a property interest, in fee or leasehold, in the ore which they remove and excludes those who remove the so-called stripping or overburden from the ore and thus prepare the ore for removal, an operation which is in itself a part of mining, and also excludes

those who under contract remove ore for others, which they do not themselves own.

The tax is invalid for the further reason that whether considered as a tax upon the occupation or upon the property it is *not uniform* upon the class selected. The chief but not the only illustration of this lack of uniformity is the fact that it taxes the operating fee owner or the ore mined by him, more heavily than the operating lessee or ore of like quality mined by him, because the latter is permitted to deduct from the taxable value of the ore the royalties he pays to the fee owner.

We contend that whether or not the tax is an occupation tax, as the state urges it is, it is without question a tax upon the property itself because it is a tax upon the only possible use or enjoyment of the property, namely, the act of mining or removing it. That it is a property tax is also shown not only by the internal evidence found in the terms of the act itself but by its operation and effect and by the legislative intent and purposes, as shown by the legislative environment, the history of the times and of previous legislation or attempted legislation upon the subject.

OUTLINE OF POINTS.

I.

THE ACT VIOLATES THE PROVISIONS OF THE COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION.

A. *Mining as conducted by appellants is interstate commerce or so intimately connected therewith that a tax thereon is a burden on or interference with interstate commerce.*

B. *The tax is one upon the property which has started on its way in interstate commerce.*

C. *The purpose of the Legislature was to burden interstate commerce directly or indirectly.*

II.

THE ACT VIOLATES THE PROVISIONS OF THE FOURTEENTH AMENDMENT OF THE FEDERAL CONSTITUTION AND OF ARTICLE 9 OF THE STATE CONSTITUTION.

A. *All similarly situated, i. e., those engaged in mining, are not brought within the class.*

B. *The tax does not operate uniformly as an occupation tax upon the persons nor as a property tax upon the property selected for taxation.*

III.

WHETHER OR NOT THE TAX BE AN OCCUPATION TAX IT IS IN ITS ESSENTIAL NATURE A PROPERTY TAX AND VOID FOR LACK OF UNIFORMITY.

I.

THE ACT VIOLATES THE PROVISIONS OF THE COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION.

A.

MINING AS CONDUCTED BY APPELLANTS IS INTERSTATE COMMERCE OR SO INTIMATELY CONNECTED THEREWITH THAT A TAX THEREON IS A BURDEN ON OR INTERFERENCE WITH INTERSTATE COMMERCE.

Before ore is mined contracts for the sale thereof are made providing for the mining and the transportation and delivery thereof to points outside the state. (8, 20, 34, 36, 37.)

Each of the appellants herein, before the beginning of the season of 1921 during which iron ore was shipped, that is, at or shortly after the beginning of the calendar year, as is the custom, entered into numerous contracts (there being, in the case of the Oliver Company, a separate contract covering the estimated output of each of the mines in Minnesota which it operated) with consumers of ore having furnaces in states other than Minnesota, whereby it agreed to mine, sell and deliver to these respective consumers f. o. b. the vessels at specified ports on Lake Erie or Lake Michigan a stated number of tons of iron ore "more or less" from each of said mines. The quantity of ore stated in each contract was the estimated output of the mine covered

by the contract for the year 1921 and it was the intention of the parties and the effect of the contract to cover all the ore produced during the year from a given mine. The ore produced by these appellants from the properties operated by them during 1921 was produced pursuant to said contracts, with the exception of a comparatively negligible quantity consumed in the state.

It is inevitable from commercial necessity before the ore is mined that when mined it must be shipped to points outside the state and this is the constantly recurring course. (33, 36)

There are ordinarily only two consumers (and in 1921 was only one consumer) of iron ore within the state, whose combined requirements constitute less than 2% of the total annual output of Minnesota mines. All ore produced, with this negligible exception, is shipped to furnaces located outside of the State of Minnesota and principally in the States of Indiana, Ohio, Illinois and Pennsylvania, the great iron and steel manufacturing states.

In 1921, a year of industrial depression and of consequently low production, upwards of 18,000,000 tons of iron ore were mined and produced in Minnesota, of which the Oliver Iron Mining Company produced in round figures 12.250,000 tons. Only 261,000 tons were consumed in Minnesota.

During the past six yars the average annual shipments of iron ore from Minnesota were approximately 38,000,000 tons. Since the commencement of iron mining in Minnesota upwards of 99% of all

ore mined and produced has been sold and shipped to consumers in other states .

The iron ore produced in Minnesota in 1921 and ordinarily in each year comprises upwards of two-thirds of all the iron ore produced in the United States and the major part of all the iron ore consumed in the United States.

It thus appears clearly, and will not be contradicted, that there is but a negligible market for iron ore in Minnesota and that inevitably the owner of iron ore in Minnesota who desires to market the same must and does seek his market outside of the state.

The act of mining is merely a step precedent and an essential prerequisite to the initiation of an interstate commerce shipment, if not actually a part of the interstate transportation of the ore.

We quote from the agreed statement of facts: (30-33)

> "11. The process of mining and transporting iron ore by these plaintiffs and generally in Minnesota, is as follows: In case of open pit mines the mining company constructs (with rails which it owns or leases from the railroad company) and from time to time as necessary, shifts and reconstructs railway tracks in its open pit mines which connect at the mouth of said mine or pit with the tracks owned and maintained by the Railway Company. The mining companies own or rent and themselves operate by their own employees locomotives in the open pits and operate steam

shovels therein. The railway company operating the lines over which the mining company ore is to be shipped from said open pit mines, maintains upon supply tracks or at so-called assembly yards at a varying distance from said mines, but as close to the same as convenience will permit, a large supply of cars of a specially constructed type peculiarly adapted for the loading of ore into the same, transporting such ore, and thereafter dumping the same into docks. From these tracks or yards such empty cars are hauled in strings or train lots by the mining company's engine to the open pit where the same are spotted at various steam shovels working in the pit; steam shovels dig the ore and lift the same immediately into the cars of the railway company; when the same are loaded they are moved from the pit by the mining company's engine and delivered upon the nearby tracks or assembly yards of the railway company, where the same are immediately made into trains and moved by the railway company to docks at Two Harbors, or Duluth, Minnesota, or Superior, Wisconsin, as the case may be, except (as hereinafter more specifically stated) in the case of wash-ore and ore destined to one of the two consumers of iron ore in Minnesota located at Duluth, Minnesota.

12. * * * The mining company having determined the volume of tonnage to be shipped to the docks makes a request on the railway company's yardmaster in each district in the afternoon of each day for its requirements of empty ore cars needed for pit loading for the next 24 hours; the yardmaster immediately places an order with the train dispatcher of the railway company for the empty cars to

arrive at the railway company's yards near the mine at a given time in order to insure a supply of such cars. Upon arrival the cars are placed in the said railway company's yards and from there taken to the pit by the mining company's locomotives. When such cars are loaded the same are returned by the mining company to the railway company's yards, and billing covering each car to the ore docks is furnished by the mining company. * * *

13. All of said ore, with the exception of ore moving to washing plants and of ore destined to the two consumers of iron ore in Minnesota located at Duluth, is consigned to ore docks at Two Harbors, Duluth or Superior, as the case may be, intended for immediate shipment to lower lake ports. Such ore is forthwith carried by the railway company to the docks owned by said company at said ports of Two Harbors, Duluth or Superior, and is there dumped from the cars into pockets upon the docks, and thence shortly by gravity into vessels engaged by shippers, by which the same is transported to the lower lake port of destination, from whence it is immediately or eventually transported to furnaces located for the most part in the states of Indiana, Ohio, Illinois and Pennsylvania, and there employed in the process of manufacture. All ore transported to docks at Two Harbors or Duluth moves from the docks via the lakes to points outside of Minnesota.

14. In the case of underground mines the ore is customarily brought to the surface through shafts in so-called 'skips' and at the surface unless stockpiled, dumped from said skips into pockets at the shaft house from

which the same is loaded into railway cars for immediate transportation. The shaft house is reached by side tracks or spur tracks which are owned by the carriers and lie directly beneath the pockets. The mining company calls upon the carrier to furnish such cars as it may require each day and these cars are set out usually in strings upon such side tracks or spurs. In most cases the mining company's employes move such cars by the aid of gravity, usually one at a time, beneath the ore pockets and when loaded run them past the pockets and assemble them in strings and notify the carrier of their readiness for movement. In other cases the spotting of such cars for loading at shafts and the assembling of them when loaded is done by the carrier with its own engine. During the period of the railroad administration a special tariff charge was made for such engine service at shaft houses or stockpiles, and prior thereto and subsequent to March, 1921, such service had been covered by the general transportation charge of the carrier. The carrier likewise moves cars to the stockpile with its own engine, spots the same for loading at such stockpile and moves all loaded cars both from shaft and stockpile out from such side or spur track to its assembly yards in the same manner as above described in the case of open pit mines. All loading of ore is done by the mining company.

15. None of the ore produced from open pit mines is stored or placed in stockpile save in an exceptional case and a small tonnage of material sometimes known as lean ore of no market value, which is dumped on adjoining or nearby lands. Some of the ore produced

from underground mines during winter time when lake navigation is closed, usually during the months of December to March, inclusive, of each year, is placed in stockpile. In 1921, 54.55% of ore mined from underground mines, being 14.66% of all ore mined in Minnesota, was so placed in stockpile. Ordinarily not more than 40.76% of the ore mined in Minnesota in a given year in underground mines, being approximately 11.71% of all ore mined in Minnesota, is so stockpiled. Practically all of the tonnage so placed in stockpile is shipped therefrom during the shipping season next succeeding the time when the same was mined."

While it does not specifically appear from the Agreed Statement, it can be calculated from the foregoing percentages, and is a fact, that slightly over 73% of all the ore mined in 1921 was produced from open pit mines and slightly more than 26% from underground mines.

"16. Wash ore, so-called, is ore which requires treatment by washing and concentration in order to prepare it for market. In the case of some of the plaintiffs it is taken from the mine by the mining company upon its own cars, drawn by its own locomotive or locomotives rented from the railway company over its own tracks to a washing plant or concentrating plant located at varying distances from such mine.

In the case of the plaintiff, Oliver Iron Mining Company, said wash ore mined as above from the Arcturus Mine, is taken by the railroad carrier from its yards at the mouth of the open pit mine, moved over the carrier's tracks

by the carrier's own engine and crew to the carrier's yards near the concentrating plant of said mining company under a regularly published tariff charge of said carrier for such service. The mining company's engine and crew take the ore at this point and haul it the balance of the distance to the concentrating plant largely over the mining company's tracks.

In the case of the wash-ore from the Canisteo and Holman groups of mines the ore is taken by the said Oliver Iron Mining Company, with its own locomotives and crews, from the open pits to the concentrating plant, all of this being done over tracks owned entirely by the mining company.

The mining companies concentrate said ore by washing, and after said treatment said ore is at once loaded upon the carrier's cars and shipped to the furnaces by rail and vessel in the manner above described in the usual course of business.

The ore concentrated or beneficiated as thus described in Minnesota in 1921 amounted to 3,095,776 tons concentrates or 17.04% of all ore mined. During the last five years it has on the average amounted to 4,371,489 tons per year, or 11.97% of all ore mined."

It thus strikingly appears that the act of mining is merely a step precedent and essentially prerequisite to the initiation of an interstate commerce shipment, if not actually a part of the interstate commerce transportation of the ore, and that the immense tonnage of ore produced, with the exception of a negligible amount which is used in Minnesota, flows practically without interruption

from the place where it lies in the ground in Minnesota to consumers in other states.

We recognize that, as this court recently declared in the case of *United Mine Workers v. Coronado Coal Company*, 42 Sup. Ct. Rep. 570, which we will discuss later, mining in and of itself and without attendant circumstances connecting it with other transactions is not interstate commerce.

It has, however, often been observed by this court, as by Mr. Justice Holmes in the *Swift Case*, 196 U. S. 375, 398, and Mr. Justice McReynolds in *Public Utilities Commission v. Landon*, 249 U. S. 236, 245, that "interstate commerce is a practical conception and what falls within it must be determined upon consideration of established facts and known commercial methods."

So here the question should be considered in the light of the facts shown by this record, and the full weight to which they are entitled should be given to the facts that before the ore is mined contracts for the sale thereof are made providing for the mining and the transportation and delivery thereof to points outside the state; that it is known to all concerned before the ore is mined, that when mined it must inevitably be shipped to points outside the state to find a market and that this is the constantly recurring course; that the act of mining is not only a carrying out of contracts already made, but is a step precedent and essentially prerequisite to the initiation of interstate commerce shipments, if not actually a part of the interstate

transportation of the ore or merely a delivery of the ore to the carrier.

It is of course elementary that interstate commerce comprises not only transportation but many other transactions such as purchase and sale of articles, the delivery to carriers, the installation of machinery and the manufacture of goods under certain circumstances, even where such transactions are conducted wholly within one state.

In *Lemke v. Farmers Grain Company,* 42 Sup. Ct. Rep. 244, this court held invalid, because imposing a direct burden on interstate commerce, a North Dakota law requiring all buyers of grain in the state to procure a license, pay a fee therefor and submit to certain other conditions. Approximately 90% of the grain annually raised in North Dakota was purchased for shipment outside the state. The Circuit Court of Appeals, whose opinion was affirmed by this court, considered the cases arising under the Sherman law applicable in determining whether the purchases of grain in North Dakota constituted interstate commerce, and, supposing a combination of purchasers in that state to control prices for grain shipped out of the state, concluded that such a combination would be clearly within the federal anti-trust act. The Circuit Court of Appeals, by Judge Carland said (273 Fed. 647):

> "Applying the rule that each case must be decided according to its own facts, we can not avoid the conclusion that a purchase of grain in North Dakota for shipment and sale at the terminal markets of Minneapolis and Du-

luth, Minn., taken in connection with the fact that the seller knows that the grain is sold for shipment out of the state, makes the purchase and sale in the state of North Dakota for shipment and sale at the above terminal markets a unit in interstate commerce."

Mr. Justice Day in stating the facts noted that there was practically no market in North Dakota for the grain purchased by the plaintiff; that the purchases were generally made with the intention of shipping the grain to Minneapolis; that this method of purchasing, shipment and sale was the general and usual course of business, and said (p. 246):

> "That such course of dealing constitutes interstate commerce, there can be no question. * * * (Citing Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282.
>
> * * * It is true, as appellants contend, that after the wheat was delivered at complainant's elevator, or loaded on the cars for shipment, it might have been diverted to a local market or sent to a local mill. But such was not the course of business. The testimony shows that practically all the wheat purchased by the complainant was for shipment to and sale in the Minneapolis market. That was the course of business, and fixed and determined the interstate character of the transactions. (Citing cases)."

In the foregoing case both buyer and seller were in North Dakota and the transaction of sale was completed there prior to beginning of transportation, but as an essential prerequisite thereto.

So in the case of *Dahnke-Walker Milling Co. v. Bondurant*, 257 U. S. 282, it was held that the purchase of wheat in Kentucky, for delivery on board cars in Kentucky, when the buyer in pursuance of its earlier practice was purchasing the grain for shipment to its mill in Tennessee, was interstate commerce so as to entitle the purchaser to exemption from the Kentucky statute imposing conditions upon foreign corporations doing business in the state. Mr. Justice Van Devanter said (p. 290):

> "Such commerce is not confined to transportation from one state to another, but comprehends all commercial intercourse between different states and all the component parts of that intercourse. * * *
>
> The state court, stressing the fact that the contract was made in Kentucky and was to be performed there put aside the further facts that the delivery was to be on board the cars and that the plaintiff, in continuance of its prior practice, was purchasing the grain for shipment to its mill in Tennessee. We think the facts so neglected had a material bearing and should have been considered. *They showed that what otherwise seemed an intrastate transaction was a part of interstate commerce.*"

So here we see that a transaction, which considered in and of itself is intrastate, may become a part of interstate commerce by reason of its relation to other circumstances and transactions.

In *Swift & Company v. United States,* 196 U. S. 375, this relationship of transactions to each other is pointed out by the court. The defendants there were engaged in various cities in the purchasing of livestock shipped from points throughout the United States, which having been converted into fresh meats, was sold again by them at the places where prepared, to dealers and consumers in other states. Here then was an interstate transportation, followed by a purchase, followed in turn by a second interstate transportation. Defendants were indicted under the Sherman Act and charged, among other things, with restricting competition in purchasing stock at the stockyards. Mr. Justice Holmes, after adverting to the fact that the purchasers and their slaughtering houses were largely in different states than those of the stockyards, said (p. 398):

> "When cattle are sent for sale from a place in one state, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stock yards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the states, and the purchase of the cattle is a part and incident of such commerce. What we say is true at least of such a purchase by residents in another state from that of the seller and of the cattle."

Again in the case of *United States v. Reading Co.*, 226 U. S. 324, which was a suit under the Sher-

man Act against an alleged combination of railroad and coal mining companies, contracts for the sale of coal, though made in the state of Pennsylvania, and though deliveries thereunder were to be made in the state, were held to be interstate commerce. Mr. Justice Lurton said (p. 367-8):

> "The coal contracts acquired when this proceeding was begun aggregated nearly one-half of the tonnage of the independent operators. Much of the coal, so bought was sold in Pennsylvania and all of the contracts were made in that state and the coal was also there delivered to the buying defendants. That the defendants were free to sell again within Pennsylvania, or transport and sell beyond the state, is true. That some of the coal was intended for local consumption may also be true. But the general market contemplated was the market at tide-water, and the sales were made the basis of the average price at tide-water. The mere fact that the sales and deliveries took place in Pennsylvania is not controlling when, as here, the expectation was that the coal would, for the most part, fall into and become a part of the well-known current of commerce between the mines and the general consuming markets of other states. 'Commerce among the states is not a technical legal conception, but a practical one, drawn from the course of business.'"

In each of the cases cited above the purchase which was held to be interstate commerce was like the mining here, made prior to and as an essential prerequisite of later interstate transportation.

Heyman v. Hays, 236 U. S. 178, is in principle exactly in point. Tennessee imposed a privilege tax upon wholesale and retail liquor dealers. The plaintiff, in its suit to enjoin the collection of this tax, showed that its business consisted wholly in soliciting orders from persons in other states by mail, the receipt of such orders and filling of the same by delivering the liquor to a carrier for through transportation out of the State. It contended that the tax was unconstitutional as applied to it, because it was an interference with interstate commerce. The State Court held that the following facts established a business done in the state so as to make the tax applicable:

(1) The existence of the goods in the State held in a warehouse as stock susceptible of being sold in the State, if there was a desire to do so and ready to be shipped in the channels of interstate commerce;

(2) *The care and attention for the purpose of packing or otherwise which must be given to the goods situated in the state to enable the interstate commerce to be made;*

(3) The receipt in the State from other states of the orders; and

(4) The clerical force or assistance which was required in the State to keep an account of the shipments as made to other states, and the supervision in Tennessee which was required to conduct the exclusive business of shipping into other states and of receiving the price resulting from such shipments.

But this court said, by Mr. Chief Justice White, (pp. 186, 187):

"Such assumed facts afford no ground for taking the business out of the protection of the Interstate Commerce Clause and thus conferring upon the State authority to impose a tax on the privilege of carrying it on. *We reach this conclusion because we are of opinion that giving the fullest effect to the conditions stated they were but the performance of acts accessory to and inhering in the right to make the interstate commerce shipments and therefore to admit the power because of their existence to burden the right to ship in interstate commerce would necessarily be to recognize the authority to directly burden such right. In the nature of things the protection against the imposition of direct burdens upon the right to do interstate commerce, as often pointed out by this court, is not a mere abstraction affording no real protection, but is practical and substantial and embraces those acts which are necessary to the complete enjoyment of the right protected.* * * * Some cases are pressed in argument as upholding the privilege tax in question under the circumstances here disclosed but they are inapposite. We do not stop to review them in order to sustain this appreciation of the cases relied on since in our opinion in the nature of things its accuracy is demonstrated by a mere statement of the proposition to which all the contentions here urged are in their essence reducible, which is as follows. *Although the shipment of merchandise from one State to another is*

interstate commerce which the States cannot directly burden, nevertheless the States may directly burden such shipments in every case where there is any merchandise kept in the State to be the subject of interstate commerce shipment or when any of those steps which are essentially prerequisite to the initiation of an interstate commerce shipment are taken by the owner of the merchandise."

Thus the Court in the last sentence above states the contention which it rejects.

Where, as in our case, the very substance that is taken from the ground is sent immediately and without change in form, out of the state, we submit that the act of mining is then as much a part of interstate commerce as is the loading of goods on a freight car or any other act "essentially prerequisite to the initiation of an interstate commerce shipment."

So also delivery to a carrier for interstate transportation is interstate commerce, *Savage v. Jones,* 225 U. S. 501, 520; and delivery of coal to cars at mines, *Pennsylvania R. R. v. Clark Coal Co.,* 238 U. S. 456; and lightering to and from vessels, *Foster v. Davenport,* 22 How. 244; *United States v. Great Lakes Towing Co.,* 208 Fed. 733, 742.

In *York v. Colley,* 247 U. S. 21, plaintiff, a Pennsylvania corporation, sued in Texas for an amount due on a contract for the purchase of ice manufacturing machines. The defense was that plaintiff had transacted business in Texas without having obtained a permit and hence was under Texas

Statutes not authorized to sue. The contract of sale covered an ice plant consisting of many parts. These parts were to be shipped from Pennsylvania to the point of destination in Texas, there to be erected and connected. It was further stipulated that this work was to be done under the supervision of an engineer to be sent by plaintiff. Supervision was to include not only the erection but the submitting of the machinery to a practical test in operation before the obligation to receive it would arise. As a matter of fact the installation of the plant took three weeks, and the testing of it one week. It was then accepted by the purchasers. This court held that all this was interstate commerce, which could not be interfered with by the State. Unless there is, so far as interstate commerce is concerned, some subtle distinction, which we cannot see, between the installation of a plant as a part of a contract to ship into a state and install, and the mining of ore as a part of a contract to mine and ship out of the state, the reasoning of the court is applicable to our case. We quote from the opinion written by Mr. Chief Justice White (p. 24).

> "As, in the second place, since the ruling in *McCulloch v. Maryland,* 4 Wheat. 316, there has been no doubt that the interstate commerce power embraced that which is relevant or reasonably appropriate to the power granted, *so also from such doctrine there can be no doubt that the right to make an interstate commerce contract includes in its very terms the right to incorporate into*

such contract provisions which are relevant and appropriate to the contract made. * * *

Distinguishing General Ry. Signal Co. v. Virginia, 246 U. S. 500, Mr. Chief Justice White said (p. 26):

> "The case last referred to when looked at from a broad point of view is but an illustration of the principle applied in the *Waycross Case* to the effect that that which was inherently intrastate did not lose its essential nature because it formed part of an interstate commerce contract to which it had no *necessary* relation. *And this truth by a negative pregnant states the obverse view that that which is intrinsically interstate and immediately and inherently connected with interstate commerce is entitled to the protection of the Constitution of the United States resulting from that relation.*"

There is an exact analogy between the relationship to interstate commerce of the installation of machinery in the foregoing case subsequent to transportation, and the mining of ore by appellants precedent to transportation. The mining is as "intrinsically interstate and immediately and inherently connected with interstate commerce" as is the installation of machinery.

It is of course well settled that manufacture in and of itself without attendant circumstances connecting it with other transactions is not interstate commerce. *Kidd v. Pearson*, 128 U. S. 1; *United States v. E. C. Knight Co.*, 156 U. S. 1;

Hammer v. Dagenhart, 247 U. S. 251. In considering these cases it should be kept in mind that mining is not manufacture. Thus in the Kidd case, this court said (p. 18):

> "The proposition that supposing the goods were once lawfully called into existence, it would then be beyond the power of the State either to forbid or impede their exportation, may be conceded."

And in defining manufacture, the court said (p. 20):

> "Manufacture is transformation—the fashioning of raw materials into a change of form for use."

But mining as distinguished from manufacturing is the taking of the raw material from the earth and delivering it to the carrier. As to manufacture, the rule is that if goods are manufactured with nothing more than a mere intent or possibility that they will be placed in interstate commerce, then manufacture is not a part of such commerce. *But if manufactured pursuant to a contract to place them in interstate commerce, or if as a practical matter they are bound to enter such commerce, then the manufacture is itself a part of interstate commerce.* This development of the law has come about chiefly in cases under the Sherman Act, but that "act cannot be invoked unless interstate or foreign trade or commerce is involved." (Coxe, C. J., 164 Fed. 708).

In *Addyston Pipe & Steel Co. v. United States*, 175 U. S. 211, this court placed limitations on the construction of the Knight case urged upon it by counsel, and while not expressly so holding, the language of the court indicates that it considered that manufacturing under some circumstances might itself be interstate commerce. The court by Mr. Justice Peckham said (pp. 241, 246):

> "If, therefore, an agreement or combination directly restrains not alone the manufacture, but the purchase, sale or exchange of the manufactured commodity among the several states, it is brought within the provisions of the statute. * * *
>
> Where the contract is for the sale of the article and for its delivery in another state, the transaction is one of interstate commerce, although the vendor may have also agreed to manufacture it in order to fulfill his contract of sale. In such case a combination of this character would be properly called a combination in restraint of interstate commerce and not one relating only to manufacture."

In *Loewe v. Lawlor*, 208 U. S. 274, where it appeared that plaintiffs, manufacturers of hats, were practically dependent upon interstate trade to consume the product of their factory, that at the time of the alleged combination of defendants, plaintiffs were in the process of manufacturing a large number of hats for the purpose of fulfilling engagements then actually made with consignees in other states, and if prevented from carrying on the work of manufacturing these hats, they would

be unable to complete their engagements, the court condemns the combination to prevent plaintiffs from manufacturing and necessarily involved in such condemnation was the decision that manufacturing, when connected with interstate commerce as outlined in the complaint, was itself interstate commerce.

In *Standard Oil Co. v. United States*, 221 U. S. 1, each of the corporations controlled by the parent company was engaged in some part of the business of producing, buying, refining, transporting and selling petroleum and its products. Many were engaged in interstate and foreign commerce in these articles. This court said (p. 68):

> "So far as the objections of the defendants are concerned they are all embraced under two headings:
>
> a. That the act, even if the averments of the bill be true, cannot be constitutionally applied, because to do so would extend the power of Congress to subjects *dehors* the reach of its authority to regulate commerce, by enabling that body to deal *with mere questions of production of commodities within the states*. But all the structure upon which this argument proceeds is based upon the decision in *United States v. E. C. Knight Co.*, 156 U. S. 1. This view, however, which the argument takes of that case and the arguments based upon that view have been so repeatedly pressed upon this court in connection with the interpretation and enforcement of the Anti-Trust Act, and have been so necessarily and expressly decided to be unsound as to

cause the contentions to be plainly foreclosed and to require no express notice. *United States v. Northern Securities Co.*, 193 U. S. 197, 334; *Loewe v. Lawlor*, 208 U. S. 274; *Swift & Co. v. United States*, 196 U. S. 375; *Montague v. Lowry*, 193 U. S. 38; *Shawnee Compress Co. v. Anderson*, 209 U. S. 423."

So in *Gibbs v. McNeeley*, 118 Fed. 120, a combination to control the production of shingles was held by the Circuit Court of Appeals of the Ninth Circuit to be in violation of the Sherman Act, where it appeared that red cedar shingles were made in no other state and that those produced in Washington were principally sold and used in other states.

Counsel for respondents relied greatly on *American Manufacturing Co. v. St. Louis*, 250 U. S. 459, and that case was cited by Judge Johnson in his opinion in the court below. All that that case decides is that manufacturing upon the record there was not interstate commerce, that it might be taxed as an occupation and that the tax might be computed upon the amount of the sales including sales in interstate commerce. This was obviously not a tax upon interstate sales or upon interstate commerce. An examination of the opinion in this court and in the State Court fails to show that either all or any of the goods manufactured were produced under contract previously made calling for shipment outside the state, and also fails to show that the goods so produced, or any of them, necessarily had to be shipped outside the state to find a market, or any

other facts that connected the manufacturing intimately or otherwise with interstate commerce. In short none of the special facts shown in this case was urged upon or considered by the court. The case is not in point and in no way controlling or even persuasive upon the questions here involved.

In a very recent case *United Leather Workers' International Union v. Herkert and Meisel Trunk Co.*, —— Fed. ——, (Circuit Court of Appeals, 8th Circuit, decision filed October 19, 1922), the court held that a conspiracy of the defendants which prevented goods not yet manufactured from being manufactured and thus passing into interstate transportation was an interference with interstate commerce under the Sherman Act. Judge Sanborn in his opinion quotes the language above quoted from the Addyston case, and then proceeds:

> "Indeed the established rule is that interstate commerce within the meaning of that term in the Constitution and the Anti-Trust Act embraces far more than the mere sale, exchange and interstate transportation of the goods. It includes intercourse, it comprehends every contract, trade and dealing between citizens of one state and those of another which contemplates the transportation of goods, persons, or information from one state into another, and every initiatory, negotiating and intervening act of the parties to that trade or deal from the time the intercourse relating to it commences until the transportation and delivery have been completed. (Citing cases.)
>
> Under these authorities the contracts evidenced by the unfilled orders were contracts

> and transactions in interstate commerce. The acts of the customers in sending the orders were initiatory acts in contracts and in interstate commerce. The receipt and acknowledgment of the receipt of the orders, *the manufacture of the goods pursuant thereto*, the packing, loading, shipping of them, *were intermediate steps and parts of*, and the delivery and payment for the goods were the final steps of *contracts and transactions in interstate commerce*, and the direct restraint, and for a time the complete prevention and thereafter the partial prevention of the taking of these steps by the unlawful means used by the defendants proved by the evidence, whether that restraint was imposed upon the selling, the making, the packing, the loading, the shipping, or the transportation of the goods, was the very restraint denounced by the Anti-Trust Act and brought the subject matter of, the parties to the suit, and the relief the court granted far within the jurisdiction of the federal court under the Anti-Trust Act."

Judge Sanborn then mentions the fact that the evidence shows that the plaintiffs were

> "continuously conducting vast currents or streams of interstate commerce in such articles as they contracted to sell, make and deliver from the State of Missouri into other states where their customers received them,"

a fair inference being that the five plaintiffs were pouring into the channels of interstate commerce goods of the value of at least $2,500,000 per annum.

Further, considering the nature of manufacturing under the facts of the case, he said:

"It is true that manufacture alone is not interstate commerce. But it is equally true that *when manufacture becomes an essential part of or an indispensable step in the execution of an interstate commerce contract or transaction, or in the continuously flowing current of interstate commerce,* as such manufacture was and is in this case, *it becomes a part of or step in that interstate commerce* to such an extent that a federal court of equity is vested with the power and is subject to the duty to enjoin the execution of a combination or conspiracy to prevent or practically prevent the performance of such contracts or to prevent or drastically restrict such interstate commerce by preventing the manufacture which constitutes one of its indispensable intermediate steps or parts. While manufacture alone is not interstate commerce, neither is buying or selling or contracting to buy or sell the goods, or loading or packing or shipping the goods, when considered by itself alone, interstate commerce, yet each and all of these may become parts of and steps in interstate commerce, and when they so become the restriction or prevention of these steps which has the necessarily intended direct and inevitable effect of stopping or drastically restraining that interstate commerce by the execution of the conspiracy to restrain or destroy it, may be lawfully enjoined by a federal court."

This court in *Stafford v. Wallace,* 42 Sup. Ct. Rep. 397, decided May 1, 1922, upheld the constitutionality of the so-called "Packers and Stock-

yards Act" of 1921 under the Federal power given by the Commerce clause. Mr. Chief Justice Taft, in delivering the opinion of the court, said (p. 402):

> "The only question here is whether the business done in the stockyards, between the receipt of the live stock in the yards and the shipment of them therefrom, is a part of interstate commerce, or is so associated with it as to bring it within the power of national regulation." * * *

After citing and discussing the Swift Case the Court then said (p. 403):

> "The application of the commerce clause of the Constitution in the Swift Case was the result of the natural development of interstate commerce under modern conditions. It was the inevitable recognition of the great central fact that such streams of commerce from one part of the country to another, which are ever flowing, are in their very essence the commerce among the states and with foreign nations, which historically it was one of the chief purposes of the Constitution to bring under national protection and control. This court declined to defeat this purpose in respect of such a stream and take it out of complete national regulation by a nice and technical inquiry into the non-interstate character of some of its necessary incidents and facilities, when considered along and without reference to their association with the movement of which they were an essential but subordinate part."

It may be urged by the State that a business may be a part of or so closely related to interstate com-

merce as to be the subject of regulation by Congress and yet be subject to taxation by the State. Yet this court, considering the possible distinction between the field of Congressional jurisdiction to regulate interstate commerce and the field of State taxation, said in the Stafford case:

> "Moreover, it will be noted that even in tax cases where the tax is directed against a commodity in an actual flowing and constant stream out of a state from which the owner may withdraw part of it for use or sale in the state before it reaches the state border, we have held that a tax on the flow is a burden on interstate commerce which the state may not impose because such flow in interstate commerce is an established course of business." (Citing the Hallanan cases, infra.)

It may be remarked that the language of the court in the passage last quoted appears to cover cases involving a tax on property, but the cases cited involve taxes on occupation and the same rule of course applies regardless of whether the tax is one upon property or upon occupation. In short, the reasoning of the court leads inevitably to the conclusion that a tax upon an occupation which is a part of or intimately and inseparably related to interstate commerce would be invalid because it was a burden upon such commerce.

The cases of *Eureka Pipe Line Co. v. Hallanan*, 257 U. S. 265, and *United Fuel Gas Co. v. Hallanan*, 257 U. S. 277, are not only conclusive au-

thorities to the effect that a diversion of a negligible amount of ore after it had started from the mines, to a Minnesota destination, does not deprive the general flow of ore of its interstate character, but they are of particular interest here in showing that this court will consider the general flow and current of interstate commerce transactions and the relation thereto of a business or occupation, in determining whether the business or occupation is interstate commerce. These were both cases of occupation taxes.

In the *Eureka Pipe Line Company* case West Virginia imposed a tax on the business of transporting petroleum in pipe lines of 2¢ for each barrel of oil transported. From the facts it appeared that the carrier of oil by pipes held the oil in storage for the owners until it received directions for shipment, but it was authorized to mingle such oil with the general mass in its pipes and tanks. The argument made in support of the law was that the producer was free to sell within or without the state and that the movement of gathering having taken place before any order was given and while the producer could still do as he wished must be regarded as intrastate commerce. This argument, however, did not weigh with this Court, for it said by Mr. Justice Holmes (p. 272):

> "As has been repeated many times, interstate commerce is a practical conception, and, as remarked by the court of first instance, a tax to be valid 'must not in its practical effect and operation burden interstate commerce.' It

> appears to us as a practical matter that the transmission of this stream of oil was interstate commerce from the beginning of the flow, and that it was none the less so that if different orders had been received by the pipe line it would have changed the destination upon which the oil was started and at which it in fact arrived."

The *United Fuel Gas Company* case involved facts substantially the same as those in the *Eureka Pipe Line Co.* case, except that it involved a movement of gas instead of oil. In this case the Court, by Mr. Justice Holmes, said (p. 281):

> "The typical and actual course of events marks the carriage of the greater part as commerce among the States and theoretical possibilities may be left out of account. There is no break, no period of deliberation, but a steady flow ending as contemplated from the beginning beyond the State line."

This statement describes with perfect accuracy the flow of ore in our case except as to the relatively small amount of ore stockpiled. There is no difference, except that ore cannot flow through pipes. But the flow of ore is without break, or period of deliberation, from the time of severance ending, as contemplated, beyond the State line.

There is nothing in *United Mine Workers of America v. Coronado Coal Co.*, 42 Sup. Ct. Rep. 570, inconsistent with our position. The precise question presented to the court and decided by it in that case with respect to interstate commerce

was that the facts shown did not support the charge of the complaint, namely, that the defendants conspired *with intent* to restrain interstate commerce *and to monopolize the same.*

In determining the intent of defendants, the court was concerned to discover the *extent* of the effect of the alleged restraint of interstate commerce rather than to determine whether such restraint or burden existed. It therefore took note of and gave weight to the fact that the production of the plaintiffs was only a small part of the total production of coal in the state, and a much less and quite insignificant part of the total interstate commerce in coal throughout the country.

Further, if there had been charged merely a restraint or obstruction to interstate commerce, the court might well have come to a different conclusion, for while it could not be said under the facts of the Coronado case that the necessary effect of the defendants' acts was to monopolize or tend to monopolize, yet it could have been said that the necessary effect was to restrain and burden, and that it was the intent to restrain and burden, interstate commerce. This distinction is pointed out by Judge Sanborn in the *United Leather Workers International Union* case, ... Fed. ... supra.

The case here differs from the Coronado case in that it appears here that all of the ore mined with a negligible exception was mined under contract previously made for shipment outside the State and is inevitably destined to form a major part of

the whole flow of interstate commerce in iron ore in the United States; whereas in the Coronado case it did not appear that contracts had been made, and only about 75 per cent of the coal mined by plaintiffs *usually* found its way into such commerce, leaving an uncertainty as to where any particular shipments might be destined when mined, and the entire output of these mines only constituted a small fraction of the total volume of coal exported from the state and an insignificant fraction of all the interstate commerce in coal in the country.

The court in the Coronado case did not say that coal mining, considered in its relation with other transactions, could never be interstate commerce, nor was it necessary for the court to consider or decide this question.

Apart from the foregoing considerations, the record here shows there are certain persons who engage in the mining of ore not owned by them, under contract with the owners or lessees. The statute shows, as we shall more fully develop later, that it was not the intention to tax such miners, but only those who have a property interest in fee or leasehold in the ore which they remove, a construction which counsel for the State themselves assert is correct. Thus the act here seeks to tax not mining, but owning and mining, or to g further, the occupation sought to be taxed may be said to be the attributes of ownership as exercised by the appellants, namely, the selling, the removing, the shipping and the delivery of the ore in interstate com-

merce. Therefore the occupation here considered is distinctly different from the bare and isolated occupation of mining considered by the court in the Coronado case.

Even if the court here should say that the tax sought to be imposed is not a tax upon interstate commerce, the mining of iron ore, under the record of this case, is shown to be so closely related to and such a necessary prerequisite to interstate commerce, if not such commerce itself, that any burden thereof affects directly, necessarily and substantially the interstate commerce itself. There can be no possible difference in effect between a tax upon the act of mining and a tax upon a contract for the sale of ore in the performance of which the act of mining is merely a necessary step. See the language quoted above in *Stafford v. Wallace*, 42 Sup. Ct. Rep. 397.

It cannot be gainsaid that the only way to get iron ore lying in Minnesota into interstate commerce is to take it from where it is in the ground and deliver it to a carrier. Mining is the immediately preceding and essentially prerequisite step to actual transportation.

Suppose a state undertook to tax the business of loading property from the ground into railroad cars to be shipped to a consignee out of the State. Would this not be a direct interference with interstate commerce? Or suppose again that a state should attempt to tax the business of moving property from one place to another in the State. Can it be doubted that in so far as this restrained or

hindered a person's delivering his goods to a carrier for transportation to a purchaser in another state, it would conflict with the commerce clause of the Constitution? If not, then the state's power over interstate commerce is supreme, and the commerce clause means nothing, for if a state can tax these acts, it can prevent them altogether, and thus put a stop to commerce among the states.

The mine owner in Northern Minnesota who shovels his iron ore up from the ground and loads it forthwith on to cars for transportation out of the state is as a practical matter doing nothing more than the man who loads brick, potatoes or other property into a box car for similar transportation. It may be said that the miner is engaged in an additional occupation, viz.: changing realty into personalty. This is, of course, technically true, but it would be giving great weight to a purely legal conception, to say that this legal effect alone distinguished the miner from one loading his personalty on to the vehicles of the carrier. The fact is that the iron ore as it lies in the ground is the same substance and in the same form as it is after it has entered interstate commerce. Indeed even in the cases involving manufacturing like the Danbury Hatters Case (Loewe v. Lawler, supra), the fact that there was a change produced by the manufacture of raw material into the finished product did not prevent the court from holding that the transactions involved were interstate commerce.

Iron ore is, of course, a subject of commerce. A

state cannot prevent its entering into interstate commerce.

Oklahoma v. Kansas National Gas Co., 221 U. S. 229;

Haskell v. Cowham, 187 Fed. 403.

In *Gibbons v. Ogden*, 9 Wheat, 1, 212, Chief Justice Marshall uses the following language:

> "It would be contrary to all reason, and to the course of human affairs, to say that a state is unable to strip a vessel of the particular privileges attendant on the exercise of a right, and yet may annul the right itself; that the State of New York cannot prevent an enrolled and licensed vessel, proceeding from Elizabethtown, in New Jersey, to New York, from enjoying, in her course and on her entrance into port, all the privileges conferred by the act of Congress; but can shut her up in her own port, and prohibit altogether her entering the waters and ports of another State."

The language of Chief Justice Marshall may fairly be paraphrased thus to apply to our case:

> "It would be contrary to all reason to say that the State of Minnesota cannot interfere with iron ore proceeding from the Missabe Range in Minnesota to Ohio or Pennsylvania, but can lock that ore up in the mines and prohibit altogether its entering these other States."

If the mining of iron ore is stopped, interstate commerce in that product is stopped. We submit that it follows that if the mining of ore is taxed, then in so far as that ore actually enters interstate commerce, that commerce is taxed.

B.

THE TAX IS ONE UPON THE PROPERTY WHICH HAS STARTED ON ITS WAY IN INTERSTATE COMMERCE.

Under point (A) we have considered the tax in its aspect as an occupation tax. We shall show at another point that whether it be an occupation tax it is a property tax. If the tax is a property tax it affixes upon the ore when it is brought to the surface of the earth. This is made plain from an examination of the statute. As long as ore is left in the ground no tax is imposed and it is not unless and until the ore is severed from the earth by the operation of mining that any tax is laid. Further, by the terms of the Act the valuation which is made the basis of the tax, is the value of the ore "at the place where the same is brought to the surface of the earth." There is no exception to the practice, so far as we are aware, of imposing a tax upon property as of the time and place the valuation of the property is made for taxation purposes.

Without recapitulating the facts it is enough to note that the tax, if a property tax, is laid upon the ore, in the case of open pit mining, when in the steam shovel being conveyed to cars of the carrier, or in cars of carriers when reaching the natural surface of the earth, and in the case of underground mining when, moving in skips, it has reached the surface of the earth on its way to be dumped into such cars. There is no halt or hesi-

tation in the movement of the ore, except in the case of ore stockpiled or sent to washer, from the time and indeed from before the time it reaches the surface of the earth to the time it is being transported by carriers to points without the state.

It is not conceivable that a state could impose a tax upon grain as it is being shot from the bins of an elevator into a railroad car, or upon packages at the instant they are being lifted from a station platform to a carrier's car for transportation without the state. The movement of the iron ore is analogous to these illustrations.

Coe v. Errol, 116 U. S. 517, is no doubt still the leading case on the question of when property becomes the subject of interstate commerce so that it cannot be taxed by a state. In that case it was held that the carrying of logs to and depositing them at a place of shipment for the purpose of transportation to another state was not a part of the transportation, but this court, by Mr. Justice Bradley, said (p. 525):

> "Nor is exportation begun until they (the goods) are committed to the common carrier for transportation out of the state to the state of their destination, *or have started on their ultimate passage to that state.*"

Substantially this same language is repeated by the court at least seven times in the opinion, as if to place it beyond a question of doubt that something else besides a delivery to a carrier may cause goods to become a part of interstate commerce,

namely, a "launching" of them on their way to another state.

In *Kelley v. Rhoads,* 188 U. S. 1, this court held that a herd of sheep driven slowly through the State of Wyoming *for the purpose of "shipment" by rail* at a point in Nebraska was property engaged in interstate commerce to such an extent as to be exempt from taxation by the State of Wyoming. It appears that the sheep were grazed along the way, time being given for the sheep to procure their sustenance by such grazing. The case of *Coe v. Errol,* 116 U. S. 517, was distinguished from the case before it on the ground that "while the property is at rest for an indefinite time awaiting transportation * * * or at an intermediate point, it is subject to taxation. But if it be actually in transit to another state, it becomes the subject of interstate commerce and exempt from local assessment."

If the movement of sheep in the Kelley case, slowly through Wyoming to the point of shipment by rail, was interstate commerce, for a stronger reason, we submit, iron ore moving speedily and without interruption for a short distance from the mine to the cars of the carrier, is also in interstate commerce, and being in such commerce, is exempt from state taxation.

The Kelley case is interesting with reference to the relatively small amount of ore that is stockpiled waiting for shipment during the season that navigation on Lake Superior is closed. This ore

is at rest temporarily only because of lack of facilities for immediate transportation. It has really begun its transit and is only in rest during transit for the reason stated. The intention continues uninterrupted that it shall, as soon as practicable, resume its journey to a point outside the state. As Mr. Justice Brown said in the Kelley case (p. 5) the law is

> "that property actually in transit is exempt from local taxation, although if it be stored for an indefinite time during such transit, at least for other than natural causes, or lack of facilities for immediate transportation, it may be lawfully assessed by the local authorities."

That, under the facts disclosed by this record, the ore when once in the possession of the carrier is in interstate commerce can hardly be questioned and counsel for the state in the lower court did not question it. However, a few cases particularly in point may properly be commented upon, since they show that property may still be in interstate commerce though not in the hands of carriers or indeed actually moving toward a destination in another state.

In *Southern Pacific Terminal Co. v. Interstate Commerce Commission and Young,* 219 U. S. 498, Young bought cottonseed cakes at various points in Texas and shipped them to himself at a pier of the Terminal Company at Galveston, where he ground them into meal and sacked them and then took out steamship bills of lading, made

to his order, and shipped the same from the wharf for export. Sometimes such shipments were made from cake or meal stored at the wharf and sometimes from cake and meal as it arrived and was delivered from the rail carrier. This court held that such transportation was within the jurisdiction of the Interstate Commerce Commission and that special privileges given by the Terminal Company to Young on the wharf at Galveston were undue preferences. This court said by Mr. Justice Day (p. 527):

> "It makes no difference, therefore, that the shipments of the products were not made on through bills of lading or whether their initial point was Galveston or some other place in Texas. They were all destined for export and by their delivery to the Galveston, Harrisburgh and San Antonio Railway they must be considered as having been delivered to a carrier for transportation to their foreign destination, the Terminal Company being a part of the railway for such purpose."

And again (p. 526):

> "In other words, the manufacture or concentration on the wharves of the Terminal Company are but incidents, under the circumstances presented by the record, in the transshipment of the products in export trade and their regulation is within the power of the Interstate Commerce Commsision."

Thus, this case is authority, not only for the proposition that the general course of transportation in Minnesota is interstate, but also that the

transportation of ore to washing plants for concentration by washing out of silica, as well as the treatment at such plant, is a part of interstate commerce.

Texas & New Orleans Railroad Co. v. Sabine Tram Co., 227 U. S. 111, involved the question of whether shipments of lumber on local bills of lading from one point in a state to another point in the same state when destined from the beginning for export trade constituted foreign and not intrastate commerce. It was shown that the lumber was transported upon local bill of lading from Ruliff to Sabine, entirely within the State of Texas; that upon its arrival at Sabine it was carried by direction of the agent of the purchaser about one-quarter of a mile beyond the station of the dock where it was unloaded from cars into water of the slip in reach of ship's tackle ready for loading on ships. Both the Sabine Tram Company who billed the lumber on local billing to Sabine, the purchaser and the railroad company knew that the lumber was destined for export. Mr. Justice McKenna, delivering the opinion of the court, said:

> "The determining circumstance is that the shipment of the lumber to Sabine was but a step in its transportation to its real and ultimate destination in foreign countries. In other words, the essential character of the commerce, not its mere accidents, should determine. It was to supply the demand of foreign countries that the lumber was purchased, manufactured and shipped, and to give it a various character

by the steps in its transportation would be extremely artificial. Once admit the principle and means will be afforded of evading the national control of foreign commerce from points in the interior of a state. There must be transshipment at the seaboard, and if that may be made the point of ultimate destination by the device of separate bills of lading the commerce will be given local character, though it be essentially foreign."

It may be noted that in our case the transportation by the carrier is under interstate freight traffic and the billing or shipping directions show the ultimate destination is outside the state (p. 31. Tariffs printed between pages 34 and 35).

The Supreme Court of Minnesota in a recent decision, *State v. Hammermill Paper Co.*, 184 N. W. 182, 149 Minn. 414, has considered this same general question. There pulp wood was loaded and shipped by rail from the northern forests of Minnesota during the winter season to ports of Two Harbors and Knife River in Minnesota, where it was stored in the rail carrier's yards until navigation over the lakes opened in the spring and then shipped to its final destination, which was Erie, Pa., as shown by the shipping bill. It was held that the first movement was a part of an interstate journey, that the delay at the ports did not destroy the interstate feature, and that the property did not acquire a situs at the ports for the purpose of taxation.

Here, of course, we have no such delay at the ports as in the *Hammermill case*. If the pulp

wood was in interstate transportation from the beginning of the movement in the woods, certainly the ore here involved is also.

While none of the ore is delayed at the docks, a relatively small portion of the ore is, after its removal from the earth in underground mines, placed in stock pile at the mines waiting for navigation to open on Lake Superior. This ore is quite as much in transit as the pulpwood in the *Hammermill case*, the only difference being that because of the physical impossibility of storage at the docks it is stored upon ground owned by the mining company near the place where it is brought from the earth. The language of the *Hammermill Case* is particularly in point here. The court stressed the impracticability of making shipments during winter months and the fact that the contract of purchase and sale clearly recognized this and *contemplated* shipment over the lakes. The Minnesota Supreme Court said on page 418:

> "It is common knowledge that the removal of pulpwood from the northern swamps and forests is practically confined to the winter season when the ground is frozen, which necessitates the hauling, unloading and holding at the docks until the opening of navigation in the spring. It is suggested that such shipments might be made by rail, thereby avoiding all delay, but the shipment of pulpwood such a distance by rail would be wholly impracticable. The contract of purchase and sale clearly recognized this fact and contemplated shipment over the lakes. If the contract amounted to an actual sale and the wood

> was en route to fill the contract, it is of no importance whether the shipment by rail was made out in the name of the shipper or the buyer."

The *Hammermill* case is a further authority that the ore which moves to washers for treatment by washing away silica and concentrating the same is in interstate commerce from the beginning of transportation, just as the grinding and sacking of cottonseed cake was held to be where the original product was treated at docks after the first stage of transportation, in the *Southern Pacific Terminal Company case,* supra.

See also to the effect that the transportation of ore by the carrier here is interstate commerce. Ohio v. Worthington, 225 U. S. 101; Galveston, etc. Ry. Co. v. Texas, 210 U. S. 217; Louisiana v. Texas, etc. Ry., 229 U. S. 336.

The foregoing considerations and authorities showing that the ore at the instant the tax is imposed is in interstate commerce also fortify and strengthen the contention made in point I herein that if the tax be an occupation tax, it is a tax upon interstate commerce because upon the mining, which under the facts is a part of such commerce.

C.

THE PURPOSE OF THE LEGISLATURE WAS TO BURDEN INTERSTATE COMMERCE DIRECTLY OR INDIRECTLY.

In order to determine the object of the Legislature the legislative environment may be resorted to.

The history of the times and particularly of legislation upon this subject and the arguments pro and con are material.

These matters may be considered not for the purpose of determining the meaning of any specific language used in the Act but to determine the object of the Legislature and therefore its real intention.

The following cases among many may be cited in support of the rule that the history of the times may be resorted to, to wit:

United States v. Freight Association, 166 U. S. 290, 318, 319.

Holy Trinity Church v. United States, 143 U. S. 457, 463.

Ross v. Schooley, 257 Fed. 290, 291 (certiorari denied 249 U. S. 615).

United States v. Union Pacific Rd. Co., 91 U. S. 72, 79, 81.

Platt v. Union Pacific Rd. Co., 99 U. S. 48, 59, 64.

And to the effect that messages of executives and reports of administrative bodies to the Legislature may be consulted:

Johnson v. So. Pac., 196 U. S. 1, 19.

Clendaniel v. Conrad, 83 Atl. (Del.) 1036, 1041.

Woodward v. Graffenried, 238 U. S. 284, 295, (which refers to a Commission as "the eyes and ears" of Congress).

The various bills previously introduced in the Legislature which are summarized in the official report of the Tax Commission to the Governor and Legislature (between pp. 38 and 39 of Record) show that this subject has been considered for many sessions by the Legislature.

The subject was first considered by the Legislature in 1907, and it is significant that the very first bill that was introduced, according to the report of the Tax Commission, was "a bill imposing a tax of 25 cents per ton on mined iron ore and providing for a rebate of 20 cents per ton on all ore smelted within the State," which was nothing more nor less than an export duty upon iron ore and was later withdrawn because it was clearly in conflict with the provisions of the Federal Constitution regulating interstate commerce (Tax Commission's Report, pp. 12-13). It should also be noted that a legislative committee appointed by the Legislature of 1907 reported adversely on pending tonnage tax bills for the reason, among others, that the committee had the assurance that a steel plant would be built in the near future at Duluth "thus making it possible to manufacture both low and high grade ore into the finished product in this state."

Most, if not all, of the bills in the past have been in the form of taxes upon iron ore as property. Some of the bills introduced in the recent legislatures, one of which passed and was vetoed by Governor Burnquist, are in evidence here (Exhibit D, pp. 50-73) and show that the intention of the Legislature in passing the present bill was to tax property, since the present bill differs but slightly from that vetoed, except that it is labeled a tax upon occupation.

These previously introduced bills, together with the messages of the Governors and the report of the Tax Commission show that the subject of the taxation of iron ore or of the industry of mining was considered by this Legislature in the light of all the arguments pro and con that had been presented to previous sessions of the Legislature.

Governor Burnquist in his message vetoing a bill passed in the session of 1919, similar to the present Act, called attention to and refuted one of the principal arguments then urged for the passage of that bill, in the following language (p. 79, f. 195):

> "The fact that most of the iron ore is taken out of the state is no more of an argument for increasing the taxes thereon than the removal from the state of lumber, granite, grain or any other property would be the ground for increasing the taxes on the last named commodities. The iron ore is being converted continually into taxable subjects, such as buildings, machinery, and other instrumentalities upon which taxes must be paid. It is true that all of these taxes that are imposed are

not paid in Minnesota but that is no reason for taxing iron ore in a different way from that applied to other Minnesota products which are removed from the state and converted into different forms of property elsewhere."

Governor Preus in his inaugural message to the Legislature of 1921 which passed this bill in discussing this subject said under the caption "Tonage Tax", after referring to certain arguments therefor (Exhibit C, p. 45, f. 157):

> "This, however, does not appear to be the chief reason for the advocacy of a tonnage tax.
>
> Argument is made that iron ore is a gift of Nature, a natural heritage of the state, a natural resource that is diminished by continued mining, leaving waste land in its wake, that it should therefore take a classification different from other forms of property which are the result of toil and that it should bear a heavier tax than other property in order to meet the depletion and disappearance of such natural wealth."

This statement in Governor Preus' message, taken in connection with the well known fact shown by this record, known to the Legislature, that substantially all of the iron ore mined in Minnesota is shipped outside the State, shows, as does the statement in Governor Burnquist's message, that the chief argument advanced by the proponents of this and similar measures was that such a bill would impose a tax upon and exact a tribute from iron ore which was being shipped outside the State

into a vast current of interstate commerce and that it was the very object of the Legislature to accomplish this result. The tax was sought to be imposed and was finally imposed for the reason and with the object of reaching this property or this industry because of the fact that the property or the product of the industry was not to be consumed in Minnesota but was to be exported from the State.

The same purpose is shown in the arguments of proponents of the bill marshalled by the Tax Commission in its report in the following language (p. 10 of its Report following p. 38 of the Record):

> "That under existing conditions the bulk of this great natural heritage is gradually being removed from the state to enrich other states, and that eventually its value as a taxable state asset will have disappeared through depletion due to shipments, and in its place will be found only valueless 'holes in the ground,' and that for this reason the state is justified in exacting a heavy toll in the form of a supertax for the depletion and disappearance of its natural wealth."

The Tax Commission summarizes the arguments of the opponents of the bill against the tax as follows (p. 11 of its report):

> "In answer to the diminishing value argument and the disappearance from the state of its natural wealth the opponents of the supertax contend:
>
> That a part of the ore is converted into other forms of wealth in this state and continues to be a taxable asset of the state.

That the mining of the ore creates other forms of taxable wealth that would not be called into being if we had no ore deposits.

That while at the present time a large part of the ore is shipped out of the state, a considerable part of it comes back again in manufactured form, and thus again becomes a taxable asset of the state.

That if our natural wealth should be subjected to a heavy supertax because a part of it is being shipped out of the state, then other states would be justified in imposing an equally heavy super-tax on coal and other natural commodities shipped into this state thus adding to their cost; that such a theory is wholly selfish and economically unsound."

It might be explained that the Tax Commission referred to the proposed tax on iron ore or the mining industry as a super-tax, because of the fact that iron ore was already taxed upon an ad valorem basis, as it still is, upon an assessed valuation of 50% of its full and true value in a class by itself, the property in the class bearing the next highest rate of assessed valuation being taxed upon an assessed valuation of 40% of its full and true value. (Appendix B.)

At the election, November 7th, 1922, a constitutional amendment proposed in a bill passed by the Legislature at the session of 1921 (the same session which passed the act here in question) was adopted by the people, the proposal and adoption of which fortifies the conclusion that the principal argument which influenced the Legislature to pass the Act here in question was the one referred

to by the Tax Commission and by Governors Burnquist and Preus in their messages, namely, that iron ore was a natural heritage of the State which was being removed rapidly from its borders and that either in the guise of taxing the occupation of mining or as a direct tax upon the property the State should take to itself a part of the heritage as it passed into interstate commerce. If this property were being transmuted into other forms of taxable wealth which remained in the State this reason for passing the act would have been removed It is only because it is being used in *interstate commerce* and passing *out* of the State that the State seeks to tax it and, under the constitutional amendment just passed, to place 50% of the proceeds of such tax in a trust fund for the use of future generations.

The Tax Commission on page 39 of its report speaking of the argument that iron ore is a natural heritage, says: "If it is a heritage it is as much a heritage of future generations as of the present generation" and discusses the desirability of building up a trust fund for the future, suggesting that if it is deemed wise to do so an amendment to the State Constitution will be necessary.

The amendment was no doubt adopted for the reasons we have stated. It follows the policy discussed by the Tax Commission. It is as follows:

> "Section 1 of article 9 of the constitution shall be amended by adding thereto a new section to be known as section 1A, which new section shall read as follows, to-wit: *Section 1A.*

> Every person, copartnership, company, joint stock company, corporation, or association however or for whatever purpose organized, engaged in the business of mining or producing iron ore or other ores in this state, shall pay to the state of Minnesota an occupation tax on the valuation of all ore mined or produced, which tax shall be in addition to all other taxes provided by law, said tax to be due and payable from such person, co-partnership, company, joint stock company, corporation or association however or for whatever purpose organized, on May first of the calendar year next following the mining or producing thereof. The valuation of ore for the purpose of determining the amount of tax to be paid shall be ascertained in the manner and method provided by law. Funds derived from the tax herein provided for shall be apportioned; fifty per cent to the State General Revenue Fund, forty per cent to the Permanent School Fund and ten per cent to the Permanent University Fund. The Legislature shall by law make the necessary provisions for carrying out the provisions of this section."

The following authorities show that the court will consider the purpose of the Legislature and if the court finds that the tax was imposed on the occupation or the property *by reason of* the property's being in interstate commerce, or intended therefor, it will declare such tax invalid as an interference with and burden upon such commerce.

In *Coe v. Errol,* 116 U. S. 517, although the court, upon the particular facts before it, held that

certain logs, even if intended eventually for exportation to another State, were still liable to taxation as part of the general mass of property of the State of their origin, Mr. Justice Bradley, delivering the opinion, said (p. 525) that it was reasonable to regard the products as liable to taxation in a State "if not taxed by reason of their being intended for exportation, but taxed without any discrimination, in the usual way and manner in which such property is taxed in the State." He then went on to say:

> "Of course they cannot be taxed *as* exports, that is to say, they cannot be taxed by reason or because of their exportation or intended exportation; for that would amount to laying a duty on exports, and would be a plain infraction of the Constitution, which prohibits any State, without the consent of Congress, from laying any imposts or duties on imports or exports."

The court then called attention to the fact that:

> "Though intended for exportation, they (the goods in question) may never be exported; the owner has a perfect right to change his mind:"

thus distinguishing the case from our case where the ore must be exported and the owner cannot change his mind. The court then said:

> "If assessed in an exceptional time or manner, *because of their anticipated departure*, they might well be considered as taxed by reason of their exportation or intended exportation; but if assessed in the usual way, when not under motion or shipment, we do not see

why the assessment may not be valid and binding."

The ore here or the occupation of mining is assessed at an exceptional time and in an exceptional manner and as the record clearly shows because of the intended and inevitable departure of the ore from the State. In addition to the tax provided for by this act iron ore in Minnesota is taxed "in the usual way", except that it is taxed upon a higher percentage of assessed value than other property, under Section 1988, General Statutes 1913 (Appendix B hereto). Furthermore, an occupation tax is an "unusual" method of taxation in Minnesota, for there never has been and is not now any occupation tax imposed in the state apart from the tax here in question.

In *Robbins v. Shelby County Taxing District*, 120 U. S. 489, there was involved a Tennessee statute providing in effect that all drummers and persons not having a regularly licensed house of business in Shelby County, offering for sale their merchandise by sample, should be required to pay to the County a certain sum for such privilege. This court, although holding that the tax was invalid insofar as it applied to persons without the State, further said concerning the discriminatory nature of the tax (p. 498):

> "It would not be difficult, however, to show that the tax authorized by the State of Tennessee in the present case is discriminative against the merchants and manufacturers of other states. They can only sell their goods in

Memphis by the employment of drummers and by means of samples; whilst the merchants and manufacturers of Memphis, having regular licensed houses of business there, have no occasion for such agents, and, if they had, they are not subject to any tax therefor. They are taxed for their licensed houses, it is true; but so, it is presumable, are the merchants and manufacturers of other states in the places where they reside; and the tax on drummers operates greatly to their disadvantage in comparison with the merchants and manufacturers of Memphis. And such was undoubtedly one of its objects. This kind of taxation is usually imposed at the instance and solicitation of domestic dealers, as a means of protecting them from foreign competition. And in many cases there may be some reason in their desire for such protection. But this shows in a still stronger light the unconstitutionality of the tax. It shows that it not only operates as a restriction upon interstate commerce, but that it is intended to have that effect as one of its principal objects. And if a state can, in this way, impose restrictions upon interstate commerce for the benefit and protection of its own citizens, we are brought back to the condition of things which existed before the adoption of the Constitution, and which was one of the principal causes that led to it."

In *Quong Wing v. Kirkendall*, 223 U. S. 59, the State of Montana sought to impose a license fee upon all persons engaged in laundry business other than the steam laundry business. While this court held that the act itself upon its face showed no

discrimination and that none was shown upon the proved facts, and that therefore they would not hold the act invalid, Mr. Justice Holmes in delivering the opinion of the court called attention to the fact that it had not been urged upon the court that the real object of the legislation was to discriminate against Chinese, and said that if it were "*aimed* at the Chinese" it would be a discrimination that the Constitution does not allow.

In *Soon Hing v. Crowley*, 113 U. S. 703, where the court refused to hold invalid an ordinance regulating the establishment and maintenance of public laundries, it nevertheless said (p. 710):

> "There is nothing, however, in the language of the ordinance, or in the record of its enactment, which in any respect tends to sustain this allegation. And the rule is general with reference to the enactments of all legislative bodies that the courts cannot inquire into the motives of the legislators in passing them, except as they may be disclosed on the face of the acts, or *inferrible from their operation, considered with reference to the condition of the country* and existing legislation. The motives of the legislature, considered as the purposes they had in view, will always be presumed to be to accomplish that which follows as the natural and reasonable effect of their enactments."

In *Hump Hairpin Mfg. Co. v. Emerson*, 42 Sup. Ct. Rep. 305, this court said that:

> "It is settled that a state excise tax which affects such commerce (interstate commerce)

> not directly, but only incidentally and remotely, may be entirely valid *where it is clear that it is not imposed with a covert purpose or with the effect of defeating Federal constitutional rights.*"

And later,

> "Clearly the statute is not a disguised attempt to tax interstate commerce. On the contrary, its purpose plainly is to differentiate state from interstate business and to impose the tax only on the former."

If it had not been shown to the satisfaction of the court that the tax there involved had not been imposed with the purpose or effect of taxing interstate commerce, if it had not appeared clearly that it was the purpose of the Legislature to differentiate state from interstate business, it is clear that the court would have condemned the statute there involved.

In our case there is no differentiation between state and interstate commerce. There is no affirmative showing that the covert purpose was not to affect interstate commerce. This tax, whether an excise tax or not, affects such commerce not only incidentally and remotely, which would be sufficient within the reasoning of the court in the Hump Hairpin case, when accompanied by such purpose, but directly.

That the object of the legislature, as well as the effect of this act, is to burden interstate commerce, is the unavoidable conclusion when we take into account the foregoing considerations together with

the facts that over 98% of all ore produced in the state goes to other states, and that the country is dependent on Minnesota for upwards of two-thirds of its iron ore production.

II.

THE ACT VIOLATES THE PROVISIONS OF THE FOURTEENTH AMENDMENT AND OF ARTICLE IX OF THE STATE CONSTITUTION, BECAUSE

A. *All similarly situated, i. e., those engaged in mining, are not brought within the class, and*

B. *The tax does not operate uniformly as an occupation tax upon the persons nor as a property tax upon the property selected for taxation.*

Article 9, Section 1, of the Constitution of the State of Minnesota, provides:

> "Taxes shall be uniform upon the same class of subjects."

The Fourteenth Amendment to the Constitution of the United States provides:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

At least two things are requisite to the validity of this law, namely:

1. That all similarly situated must be brought within the class, and

2. That all within the class must be treated alike.

The classification provided for in Section 1 of this statute is as follows:

> "Every person engaged in the business of mining or producing iron ore or other ores in this state shall pay to the State of Minnesota an occupation tax equal to 6 per cent of the valuation of all ores mined or produced."

The legislature having adopted and put into that class "every person engaged in the business of mining or producing ore," the validity of the law must be tested by that classification.

The statute violates both the Federal and the State Constitutions in each of these two essential requisites.

A.

ALL SIMILARLY SITUATED (THOSE ENGAGED IN THE BUSINESS OF MINING) ARE NOT BROUGHT WITHIN THE CLASS, SINCE THE STATUTE DOES NOT APPLY TO THOSE ENGAGED IN THE BUSINESS OF MINING WHO HAVE NO PROPERTY INTEREST IN THE ORE WHICH THEY PRODUCE.

The particular inquiry to which we invite the attention of the court, under this subdivision, is whether, in view of the terms of the law and of all the circumstances and conditions shown by the record, or reasonably to be inferred, this law does include within the classification and reach and operate upon, every person engaged in said business of mining.

The further question as to whether this law operates uniformly and equally upon each member of the selected class, will be discussed in the following subdivision of this brief.

Five corporations ordinarily are, and in 1921 four corporations were engaged in removing the overburden from iron ore deposits in open pit mines, who were not themselves engaged in the ultimate detachment and removal of iron ore from the ground. The removal of such overburden, ordinarily called "stripping" is a necessary part of mining and producing iron ore by the open pit method and is conducted by steam shovels in a similar manner to the removal of the ore itself in such mines. During the year 1921 there were four cor-

porations engaged in mining iron ore by steam shovels in open pits and loading the same on cars with extensive plants representing the investment of hundreds of thousands of dollars. (35 and 38.)

With reference to underground iron mining, as distinguished from open pit mining, it appears from the evidence that practically all underground mining in Minnesota is carried on by what is known as the contract system, that is, a group of miners, usually four, take contracts to mine this underground ore at so much per ton, the average price being about 45¢ per ton. (37.) It appears from the record that somewhat over 26% of all ore mined in said state is taken from underground mines and somewhat over 73% is mined from open pit mines. (Calculated from Record, page 32.)

It is the contention of the appellants that this law does not include within the classification, reach or operate upon all those engaged in the mining of iron ore and other ores, and violates the provisions of the Fourteenth Amendment of the United States Constitution, providing that "No state shall * * * deny to any person, within its jurisdiction, the equal protection of the laws," and is also in conflict with Section 1 of Article 9 of the Constitution of the State of Minnesota, providing that "Taxes shall be uniform upon the same class of subjects."

It appears from the facts to which we have referred that the stripping companies, ore loading companies and contract miners, are in fact engaged in the business of mining. If the business is such

as contributes materially to either mining or producing iron ore or other ores then it is apparent that the persons so engaged should come within the terms of this act and unless such persons are required to pay this tax for carrying on their business, then the statute gives them a privilege denied to others and is an invalid exercise of legislative power.

But the tax provided for in the statute in fact applies only to those who are engaged in operating mining properties, either as owners or lessees. This is made apparent by the fact that the tax is based upon the valuation of all ores mined or produced and the ultimate valuation is made to depend upon the amount of the deductions provided for in Section 2. It is apparent that a stripping contractor, a company engaged in loading ore in open pit mines, under contract, and individual contract miners would not be in a position to claim such deductions. Their character is such that the knowledge of the data upon which they are based would be known only to fee owners or lessees and not to the contractor, unless voluntarily given to him. The character of the reports called for by the Tax Commission respondents in these cases, as indicated by the blank forms attached to the bills of complaint, shows that the Tax Commission are undertaking to collect this tax only from the operating companies who are owners or lessees.

The records and papers called for in Section 13 of the act are required to be produced by the per-

sons owning or operating the mines under penalty for refusal so to do. The fact that other persons engaged in mining are not required to produce their books and papers is a clear discrimination against persons owning or operating the mines.

The State officers, respondents here, admit and assert that none of the foregoing contractors are among the persons sought to be taxed by the act and that this tax cannot be collected from other than the owners or lessees of the mining properties.

In view of the above considerations, the conclusion is inevitable, that there are important members of the class of persons engaged in the business of mining or producing iron ore who are not subject to the tax sought to be imposed, and treating the law as imposing an occupation tax it is invalid as not including every person engaged in the occupation. The law is, therefore, discriminatory against these appellants, all of whom are owners or lessees operating mining properties.

Moreover, a mining company may in a given year, or during a series of years, be doing extensive mining business, in the way of opening up property for production, such as stripping, shaft sinking, drifting and the like, all of which is strictly mining business and a necessary preliminary to the actual taking of the ore from the ground, and yet during said year or years such company might not actually detach or move any ore. All of the business carried on, under said assumed state of facts, would be prosecuted by the employment of substantially the same methods, working force,

tools and machinery as are used and employed when ore is actually produced. Under this law, such company would not be liable for any tax whatever for the given year or years, while its neighboring company would bring to the surface a certain amount of ore, upon which it would be required to pay a tax.

Under the decisions of this court, and of the Minnesota Supreme Court, in inquiring into the reasonableness of the classification and the purpose sought to be served thereby it is proper to consider whether in the language of the court in Mutual Benefit Insurance Co. v. Martin, 104 Minn. 179, "it is impracticable to apply (to the property) the ordinary methods of taxation." In Section 1 of the act occur these words: "which said tax shall be in addition to all other taxes provided by law." There is no pretense that this tax is in lieu of any other tax or burden, or that any benefits are offered to those upon whom the tax is levied, to offset the additional burden thereby imposed. It is frankly and explicitly an additional tax.

It may be pertinent to inquire whether there is any sound reason why this additional tax should be levied against the iron mining industry of Minnesota, and the court will doutless take judicial notice of the fact that iron mining is the only mining of any substantial importance in the state. Clearly, the reason for such additional tax cannot be that iron ore and the mining industry are not adequately taxed by other methods. Section 1988, General Statutes of Minnesota 1913, printed as Ap-

pendix B hereto, which took effect January 1, 1914, shows that iron ore, both mined and unmined, was classified for purposes of taxation, long before the passage of the act of 1921, here in question, and not only has iron ore been classified, but it has been placed in Class 1 by itself and takes the highest percentage of assessed valuation of any property in the state. Exhibit "B," being Chapters 5 and 6 of the 1920 Report of the Minnesota Tax Commission (printed between pp. 38 and 39 of Record) shows that the methods adopted for arriving at the valuation of iron ore taxation, pursuant to the above statute, have been successful.

There is, therefore, nothing inherently difficult in the matter of assessment of this class of property for purposes of taxation, which calls for an unusual method of classification for taxation or for an additional tax.

The magnitude of the business of iron mining in Minnesota may be readily understood when it is considered, as has already been pointed out, that substantially two-thirds of all of the iron ore mined in the United States is produced in the state. During the year 1921 (the year for which this tax is sought to be collected) there were upwards of forty-one corporations engaged in this business and there were upwards of eighty-three mines in operation. The business is necessarily of a localized character, confined to the ore-bearing districts, and all of the mines are situated in the Northeastern portion of the state. It must be conceded that this industry contributes to the most vital needs of

the state and nation. That it should be singled out as the subject for an additional tax, when the product of the mines is already being taxed upon the highest valuation of any property in the state, suggests arbitrary and unreasonable action on the part of the legislature in making this classification, unless some valid reason appears therefor. Whether considered as an occupation tax or as a property tax, the burden sought to be imposed by this law necessarily falls upon the mining industry. The mere size of the business is clearly no reason for the distinction.

The corporations engaged in mining business in this state enjoy no special privileges or franchises, not conferred upon other corporations engaged in private business; hence this tax cannot be claimed in any proper sense to be a special franchise tax. It does not appear and is not the fact that any unusual burdens are placed upon the state or public by reason of the conduct of mining business in Minnesota, other than such as pertain to the conduct of other private enterprises of like magnitude. All of the above considerations are pertinent, as it seems to us, in connection with the reasonableness of the proposed classification, whether the tax is treated either as an occupation tax or as a property tax.

As above pointed out, iron ore was already classified for purposes of taxation when this statute of 1921 was enacted. We further claim that this statute is in truth and in fact a property tax, though called an occupation tax. If this is true, it neces-

sarily follows that the classification adopted here is invalid as manifestly operating unequally upon the property selected and classified by the earlier act. The character of this tax as a property tax is developed at another point in this brief.

B.

THE TAX DOES NOT OPERATE UNIFORMLY AS AN OCCUPATION TAX UPON THE PERSONS NOR AS A PROPERTY TAX UNON THE PROPERTY SELECTED FOR TAXATION, BECAUSE OF THE PROVISIONS FOR THE DEDUCTION OF ROYALTY AND OTHER ITEMS.

Under this subdivision we will discuss objections to the validity of the act, considered both as an occupation tax and as a tax on property. That the tax is one on property is developed at another point. The argument under our present subdivision is in the form of language used, frequently addressed to the inequalities upon the persons engaged in the occupation, but each and every one of the objections urged applies with equal, if not greater, force when the tax is viewed as a property tax. We ask that the court keep this in mind in considering this subdivision of our brief, for to avoid unnecessary length, we will not repeat each point of our argument upon inequality in order to direct it separately to the tax as one upon property.

(1) *The fee owner is discriminated against in the operation of his own property, having a higher tax to pay than a lessee operating the same property.*

This statute, called an occupation tax, in direct and unqualified terms imposes a higher tax on a fee owner who operates his own property than an a lessee who operates the same property; or upon ore mined by a fee owner than upon ore mined by

a lessee. The statute provides that the valuation on which the tax is levied shall be ascertained by subtracting from the value of the ore at the surface,

> "4. The amount of royalties paid on the ore mined and produced during the year."

A fee owner operating his own property of course has no royalties to pay. He is therefore entitle to no deduction. He must pay the 6% tax on the full value at the surface of the earth without any such deduction. If another leases the same property at a royalty of $1.25 per ton and operates it, the lessee is the operator and then, in computing the tax, he is entitled to deduct from the value at the surface the $1.25 per ton royalties paid. Six per cent on this amount equals 7½ cents per ton. Therefore, in such case one who operates a given property as fee owner must pay 7½ cents per ton more than a lessee operating the same property.

Under the statute the fee owner is not allowed any deduction corresponding to the lessee's deduction for royalties. He is not allowed to deduct any part of the cost of the fee of the property. The lessee has an absolute deduction for royalties; the fee owner has no such deduction or corresponding deduction whatever.

It is clear, therefore, that the statute does not treat alike all to whom it applies, and this is one of the essentials of any occupation tax measure where the constitution requires that taxes shall be uniform upon the same class of subjects.

The agreed statement of facts shows that royalties run as high as $1.25 per ton (29, fol. 51). Some mines contain as much as fifty million tons of ore. Figuring the royalty at $1.25 per ton, the total on such a mine would be $62,500,000. A lessee operating this mine would have no tax to pay on this amount, as he could deduct it from the valuation of the ore at the surface of the earth in computing the tax. *But if the fee owner himself operated, he must pay the State a 6% tax on this, or a tax of* $3,750,000. Yet the thing the law pretends to tax is the occupation or business of mining. In one instance a lessee operates and is engaged in the occupation; in the other a fee owner operates and is engaged in the occupation. But in the latter instance the fee owner pays $3,750,000 tax, from which the law exempts the lessee. The law does not treat all alike to whom it applies and violates an essential of constitutionality.

Such discrimination against an owner of property in favor of a lessee or renter is one of the things constitutions are designed to prevent—that is, the protection of property rights.

The principle violated—that all within the statute must be treated alike—is most easily illustrated by comparing its results as between a fee owner and a lessee. But the same principle is just as much violated as between lessees who happen to pay different rates of royalty. The agreed statement shows that some mines are operated by fee owners (page 29, fol. 51), and that where they are leased the royalties vary from 12½ cents per

ton up to more than $1.25 per ton (page 29, fol. 51). Widely varying rates of royalty are paid on ore of the same quality, chemical analysis, cost of production and market value (page 29, fol. 51). The rates depend more on the time the lease was made and the necessities of the lessor and lessee than on the value of the ore.

Yet this statute allows the deduction of royalties paid, arbitrarily and regardless of their amount or why they are paid. They are deducted simply because they are royalties. So one operator may pay a royalty of 12½ cents per ton. Another operator operating a mine alongside, of exactly the same character, may pay a royalty of $1.12½ per ton. The latter in the computation deducts $1.00 per ton more from the taxable value than the former, and therefore pays six cents per ton less tax. They are both engaged in the business or occupation of mining and carrying on their business in exactly the same way and to the same extent. This difference in royalty paid may require one to pay a tax of six cents per ton and the other will have no tax to pay.

(2) *The tax is levied, not uniformly on those engaged in the business of mining, but dependent wholly on the rate of royalty they have agreed to pay by private contract.*

It is apparent from the foregoing discussion that the tax is in reality not levied on the business or occupation of mining but is levied only upon those operators who do not pay sufficient

royalties so that in the computation no taxable value is left after royalties are deducted. The tax is imposed on the operator. If the mine is leased or sub-leased it is always the last sub-lessee who operates, and of course the last sub-lessee pays all the underlying royalties. He is exempt from taxation to the extent he so pays royalties. If, therefore, the lessee or last sub-lessee, who operates, has agreed to pay sufficient royalties which when deducted from the value of the ore at the surface leave no taxable valuation, there is no tax to pay. It therefore follows that the tax is imposed upon those only who operate, *having failed to lease or sub-lease their properties at a royalty which consumes the returns on the operation.* In brief it is a tax upon the failure to lease properties upon a royalty basis so high as to absorb the returns and value of the ore in place.

The result is that the tax is imposed inversely according to the royalty paid—those who pay high royalties pay little or no tax—those pioneers who obtained low royalty leases years ago and developed the iron ranges, pay a greater tax, and those fee owners who operate their own properties pay the maximum tax, being entitled to no royalty deduction.

Therefore, the tax is imposed not according to the extent or kind of operation carried on, but *according to the private royalty contracts which the operator may or may not have made.* If the operator has agreed to pay royalties to such an extent that there is no profit to him, there is no

tax to pay. If he operates as owner he may have 7½ cents or more per ton to pay. Each operator is taxed, therefore, according to his own particular private contract as to royalties. Leases made years ago call for twenty-five cents per ton royalty, others for thirty-five, forty, fifty, sixty, seventy-five, a dollar and a dollar and a quarter per ton. The statute allows the deduction of these royalties and in effect taxes the owners of the leases on the basis of the private contracts they made years ago.

Royalties are deductible under the statute and are not otherwise taxed as such at all.

Suppose that this statute had expressly taxed fee owners who operate their own property and had exempted all lessees who operated. No one would think of claiming it was valid. Yet, in its practical working, it will often result in exactly that. If a man buys a property in fee at say $1.00 per ton and his deductible expense of getting the ore to the surface is $2.00 per ton and the ore at the surface is only worth $2.75 per ton, he nevertheless has a tax to pay on 75 cents per ton valuation, while if instead of buying outright he had leased at 75 cents or $1.00 per ton royalty, no tax would have been required.

The nominal classification in this law is all those "engaged in the business of mining or producing iron ore and other ores." The deduction of royalties in effect, then, exempts anyone who pays royalty enough to eat up the taxable valuation. The statute might as well in terms have said "all

those engaged in the business of mining or producing ore, except those who pay a royalty thereon." Had it done so in terms, the discrimination against an owner operating his property would have been manifest. If it is not equally clear as the law stands, it is due to the form of expression and not to the fact.

(3.) *Other deductions from taxable valuation are purely arbitrary and prevent all within the class being treated alike, since they result in the tax being levied or not levied depending on the private contract and affairs of the particular operator and other arbitrary matters not connected with the business of mining.*

Subdivision 1 of Section 2 provides for the deduction of the reasonable cost of separating the ore from the ore body, including the cost of hoisting, elevating or conveying the same to the surface of the earth.

Subdivision 2 of Section 2 provides for deducting an amount for each ton of ore mined or produced during the year equal to the cost of removing the overburden, divided by the number of tons of ore uncovered.

Subdivision 3 of Section 2 provides for deducting an amount for each ton produced during the year from an underground mine, equal to the cost of sinking and constructing shafts and running drifts, divided by the number of tons of ore that

can be advantageously taken out through such shafts and drifts.

Subdivision 5 of Section 2 provides for a deduction of a percentage of the advalorem taxes levied for the year against the realty in which the ore is deposited, equal to the percentage that the tons mined or produced during such year bears to the total tonnage in the mine.

In connection with the deductions allowed by the first three subdivisions, the State admits in the agreed statement of facts that:

1. There is a substantial difference in the operating costs of persons engaged in mining and the production of iron ore, due to physical characteristics of and conditions surrounding different mines, and that some operate in a more efficient and economical manner than others (p. 28, fol. 49).

2. Some of the plaintiffs operate both open pit mines and underground mines, and some operate solely open pit mines, and others operate solely underground mines (p. 28, fol. 49).

3. The amount per ton of the deductions allowed is much greater in the case of underground mines than in the case of open pit mines (p. 29, fol. 50).

4. The amount per ton of the deductions allowed varies as between different open pit mines and as between different underground mines (p. 29, fol. 50).

5. The items of cost allowed as deductions in each class of mines were much lower in years past than they have been in recent years (p. 29, fol. 50).

6. Many mines now in operation were opened up and developed in years of lower cost, while other mines now in operation were opened up and developed in recent years of higher cost (p. 29, fol. 50).

7. The cost of stripping open pit mines, for which a deduction is allowed, varies from approximately 25 cents to approximately 45 cents per cubic yard of material removed (p. 29, fol. 50).

8. There is a marked difference between open pit mining and underground mining. Generally speaking, open pit operation is simply one of the use of steam shovels in loading ore upon the cars on which it is transported to the ore docks, while underground mining involves construction of shafts and tunnels or drifts, moving the ore to the bottom of the shaft, loading it into "skips," so-called, in which it is moved to the surface, and placed in pockets at the shaft house and from thence into cars for transportation. Underground mining requires pumping out water, ventilation and timbering, the operation involving restrictions not found in open pit mines (pp. 30, 31, 32, 34).

9. Mining leases have expired in the past and others may expire in the future, before the tonnage in the property covered by the lease is exhausted (p. 35, fol. 61).

10. The overburden of each has been removed from certain open pit mines to a depth of 150

feet and the surface material has been necessarily hauled a distance of several miles to a suitable dumping ground. The cost per mine has sometimes run above two million dollars. These stripping operations in respect to different mines have been carried out at different periods in the past. Thus some of the mines of plaintiffs operating in 1921 expended the cost of removing the overburden twenty years ago, others removed a part of the overburden from year to year as mining progressed, still others have only in the past year caused such work to done, and in case of others the work still remains to be done (p. 30, ff. 51, 52 and pp. 113, 122).

It is thus seen that these costs vary, depending upon a great variety of factors. For instance, they vary according as an operator works efficiently or otherwise. They vary according to the prevailing labor and material costs at the time the development took place. They vary according to the depth of the overburden, weather conditions, the kind of material passed through or which it is necessary to remove, the location of the property, the kind of equipment supplied for doing the work, the overhead charges, depending upon whether the operator operates one or many mines, and varying factors without end.

The law allowing these deductions arbitrarily attempts to fix the deduction according to the cost of making the ore available or bringing it to the surface, and distributes the entire cost of production over the entire tonnage so made available. Yet it is often the case that a lessee develops a

mine under a lease too short to allow it to get out all the ore within the life of the lease. In such cases, however, he is allowed a deduction only of that part of the entire cost apportionable to the number of tons he gets out, figured according to the entire number of tons in the mine. Therefore a lessee, under such deductions, may be ultimately allowed only a fraction of the cost to him of removing what he gets, while other operators ultimately are allowed the full cost.

No provision is made for deduction of interest on investment.

In the development of an open pit mine, in figuring the cost, an operator must invest an enormous sum at the beginning in order to strip the overburden, and in making any calculations he must figure the interest on that sum which he invests or borrows, in determining his ultimate profit or loss. And yet, in figuring the cost, the law contemplates the allowance of no interest, although the interest charge in such case might be as large, or larger than, the original cost. As an illustration of the general situation described under paragraph 10, the Susquehanna Mine, operated by the plaintiff Rogers-Brown Iron Company, was stripped some ten or more years ago, to a depth of one hundred fifty feet, before the ore was reached, and the overburden was largely carried for two to three or four miles from the mine, and many million yards of overburden had to be removed, at a cost of upwards of twenty-five cents per yard, and in the neighborhood of $2,000,000

was so invested. Yet the life of this mine in ordinary operations would probably extend from thirty to forty years, and this original investment, with interest thereon, has to be distributed, in making any figures, over the life of the mine, and the interest charge would amount, during that time, even as reduced from year to year as a portion of the principal is gotten back through mining, to more than the original investment. Yet no allowance is made for this interest. In the case of a small mine, which is mined out in two or three years, there is but little interest charge. This shows that the law could not operate uniformly upon the same class of subjects, because in other instances the mine would be developed and mined out within a year or two.

In connection with the deduction of ad valorem taxes provided for in Subdivision 5, we call the Court's attention to the following facts:

The proportion which the tonnage produced from a given mine in a given year bears to the total tonnage therein varies as between different properties. The tax rates upon which ad valorem taxes are levied vary greatly in the different localities where the mines of these plaintiffs and other operators are situated because of the difference in school and municipal taxes levied and the total taxable property within taxing districts. In one locality wherein mines are situated the rate in 1921 was as high as 146.3 mills on the dollar, and in another was as low as 38.2 mills on the dollar (p. 29, f. 50).

The element of equality and uniformity is entirely lacking if one operator is allowed a deduction of nearly four times that of another operator on account of the payment of ad valorem taxes, merely because the first operates in a different section of the iron range than the other.

We do not know what the thought of the framers of this law may have been in providing for this deduction of a portion of the ad valorem taxes. At first blush it might seem that there was an attempt to avoid double taxation. Yet it certainly fails to accomplish that object. It must be observed that this clause does not allow a deduction of the ad valorem taxes from the taxes to be paid under this law. What it does is to allow simply a deduction of six per cent of the ad valorem taxes paid on the particular ore mined, from the taxes to be paid under this law.

It is apparent, from the character of these deductions, the well known hazards of the business and the fluctuating commercial value of iron ore, that the sum of these authorized deductions may, in a given year and in all probability will in many years, exceed the value of the ore at the place where it is brought to the surface of the earth, insofar as certain operators are concerned. Such operators would, therefore, pay no tax whatever under this act for such years, while other more fortunate operators would be subjected thereto.

The rule is well settled, both by the decisions of this Court and the Supreme Court of Minnesota,

that classification of subjects generally for the purpose of legislation must be reasonable and that laws must operate uniformly upon all within the selected class. The decisions so frequently relate both to the question of proper classification and to the uniformity of the laws' operation that it is more convenient to consider the questions together with relation to the authorities. The rule laid down by the decisions is, in substance, the same, whether the question arises under the Fourteenth Amendment or the provisions of the State Constitution, and it would apply equally whether the subject of the tax is the occupation mining, or the property ore.

Article V of the Amendments to the United States Constitution corresponds in many respects, in limiting the powers of Congress, to Article XIV of the Amendments, limiting the power of the States. But Article V, limiting the power of Congress, contains no clause corresponding to Article XIV as to the State, which reads:

> "nor deny to any person within its jurisdiction the equal protection of the law."

It has been squarely held that a tax law passed by Congress need not be "uniform on the same class of subjects," as required by our State Constitution, but that territorial uniformity is all that is required.

Flint v. Stone Tracy Co., 220 U. S. 107;
Knowlton v. Moore, 178 U. S. 41.

Therefore the tax or other laws passed by Congress are not tested by the same criterions as laws passed by the States.

This statute has not been construed by the Supreme Court of the State of Minnesota. It will therefore be construed, and its constitutionality under the State Constitution, will, if necessary for the decision of the case, be passed upon under such circumstances by this court.

In the case of *Davis v. Wallace*, 257 U. S. 478, this court said, with respect to the consideration of both federal and state questions:

> "The case made by the bill involved a real and substantial question under the Constitution of the United States and the amount in controversy exceeded $3,000, exclusive of interest and costs, so the case plainly was cognizable in the District Court. In such a case the jurisdiction of that court, and ours in reviewing its action, extends to every question involved, whether of federal or state law, and enables the court to rest its judgment or decree on the decision of such of the question as in its opinion effectively dispose of the same."

The rules which govern this court in the determination as to whether a particular classification is or is not in conflict with the equal protection clause of the Fourteenth Amendment are too well settled, by repeated decisions of the court, to require an extended citation. The following language of Mr. Justice Brewer, in *Gulf C. & S. F. C. Ry. Co. v. Ellis*, 165 U. S. 150, has been frequently quoted and approved:

> "It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection."

In the case of *Southern Railway Co. v. Greene,* 216 U. S. 400, Mr. Justice Day said:

> "While reasonable classification is permitted, without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed; and classification cannot be arbitrarily made without any substantial basis. Arbitrary selection, it has been said, cannot be justtified by calling it classification."

In the case of *Cotting v. Godard,* 183 U. S. 79, Mr. Justice Brewer, in delivering the opinion of the court, after reviewing the authorities, said:

> "But while recognizing to the full extent the impossibility of an imposition of duties and obligations mathematically equal upon all, and also recognizing the right of classification of industries and occupations, we must nevertheless always remember that the equal protection of the laws is guaranteed, and that such equal protection is denied when upon one of two parties engaged in the same kind of

> business and under the same conditions, burdens are cast which are not cast upon the other."

The subject of the application of the equal protection clause was recently before this court in the case of *Truax v. Corrigan*, 257 U. S. 312. The authorities are there so fully collected that it would seem unnecessary to cite further cases on the general subject. We wish, however, to quote the following language of the present Chief Justice, in delivering the opinion of the court in that case, as this language is general in its application:

> "Thus the guaranty was intended to secure equality of protection not only for all but against all similarly situated. Indeed, protection is not protection unless it does so. Immunity granted to a class however limited, having the effect to deprive another class, however limited, of a personal or property right, is just as clearly a denial of equal protection of the laws to the latter class as if the immunity were in favor of, or the deprivation of right permitted worked against, a larger class."

In determining whether or not a particular statute is in conflict with the equal protection clause of the Constitution this court will examine the law to determine its real scope, purpose and effect, and will then decide each case upon its own facts.

Bell's Gap Ry. Co. v. Pennsylvania, 134 U. S. 232.

Southwestern Oil Company v. Texas, 217 U. S. 114.

Section 1 of Article 9 of the Constitution of Minnesota provides, among other things: "Taxes shall be uniform upon the same class of subjects." This provision of the Constitution was adopted as an amendment to said Article IX in the year 1906. In construing this amendment the Supreme Court of Minnesota said in *Mutual Benefit Insurance Company v. County of Martin*, 104 Minn. 179:

> "This amendment removes some of the restrictions which were imposed upon the legislature by the constitution as it stood before the adoption of the amendment. It provides for the classification of the subject-matter of taxation, and requires that taxes shall be uniform upon the subjects of the particular class upon which they are imposed. In making a classification the legislature has a very wide range of discretionary power. The classification must be reasonable, and such as is suggested by essential differences of nature, situation, or circumstances, or by characteristics, which make it desirable on grounds of public policy to apply to the members of the class a particular method of taxation, and impracticable to apply thereto the ordinary methods of taxation."

In *State v. Minnesota Tax Commission*, 128 Minn. 384, the court said:

> "The effect of this amendment is not to remove all limitation upon the classification of subjects of taxation. The classification must be a reasonable one and such as essential differences suggest."

Prior to the enactment of Section 1 of Article 9 of the Minnesota Constitution, which became effective in 1906, the decisions of the Minnesota Supreme Court, with reference to classification, were based upon other provisions of the Constitution, namely: Sections 33 and 34 of Article 4, prohibiting special legislation, and Section 2 of Article 1, which declares that:

> "No member of this state shall be * * * deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land."

Since the passage of that amendment, the decisions as to taxation have arisen under the said Section 1 of Article 9.

The following Minnesota cases are especially in point:

In *State v. Wagener*, 69 Minn. 206, the Minnesota Supreme Court held unconstitutional a law which provided for the licensing of peddlers, containing a provision that it was not to be construed as to prevent any manufacturer, mechanic, etc., from selling his articles or products, either by himself or his employee. It was held that the business of hawking or peddling was a legitimate one which the legislature could regulate only for the purpose of preventing its becoming a nuisance and that for such purpose the distinction between peddling of articles by the manufacturer and peddling the same articles by the purchaser thereof was no proper basis for classification and that such classification was wholly arbitrary and void and the act therefore invalid. The court said (p. 208):

> "This court has often held that, under these sections, the legislature must treat alike all who are in the same condition, must make the law apply to a whole class, and cannot make a law which applies only to a part of a class. And the class must be selected on some distinction, or be defined by some principle, which might naturally or properly distinguish it from all other classes."

And again (p. 209):

> "It cannot be held, on any sound principle, that peddling may not become a nuisance as well when the peddler or his employer has manufactured the wares he peddles as when some one else has manufactured them. * * *
>
> "In the same manner as the act here in question attempts to distinguish between peddling by the manufacturer and his servant and peddling by the purchaser from such manufacturer, it attempts to distinguish between peddling by the farmer or nurseryman and peddling by the purchaser from such farmer or nurseryman; between peddling by the butcher and peddling by the purchaser from such butcher. These distinctions are arbitrary and no proper basis for classification."

So here, by exact analogy, there is no proper distinction between one who mines his own ore and one who mines the ore of another, and the Act which we are considering operates unequally on these two classes and is void.

In *Murray v. Board of County Commissioners*, 81 Minn. 359, the court held unconstitutional an

act providing for the treatment of inebriates by counties, because it was special legislation as to the affairs of counties and was not uniform in its operation throughout the state. The act was limited to counties having a population of fifty thousand and limited the operation of the law to drunkards who voluntarily applied, and then to only one in every ten thousand in population. The court therefore held that there was not only an improper classification, but that it was void because it did not operate uniformly upon all members of the class.

In *Duluth Banking Company v. Koon,* 81 Minn. 486, the court held unconstitutional a law for the collection of delinquent taxes in counties where, at the time of the passage of the law, the delinquent taxes should exceed the sum of thirty mills on the dollar of the assessed valuation of real property in the county for the year 1896, the court holding that it was an improper classification, as it did not operate uniformly throughout the State. The court held that to justify a distinction there must have been some substantial inherent distinction between tracts of land situated in counties subject to the act and tracts of the same general character located in other counties, and the court says:

> "The objects upon which the law was intended to operate *were the tracts of land.* The owners thereof were to be affected and benefited without regard to residence. If tracts or parcels of land have been forfeited to the State for non-payment of state, county,

> city, or town or school district taxes, what substantial difference or distinction can be made between such forfeited lands, based solely upon county lines—that is, by taking counties as the units of classification?"

Applying the same reasoning where the subject of the law is an occupation tax on mining and producing ore, what reasonable basis is there for the distinction between two who follow that business, one of whom pays a royalty and the other does not? The business aimed at is that of mining. One who produces very valuable ore at the lowest cost may pay no tax, simply because he pays some third party royalty, while an owner, who produces his own ore, possibly at a high cost and of low grade, may pay a substantial tax because he pays no third party royalty.

In *State v. Canda Cattle Car Company*, 85 Minn. 457, the court held unconstitutional a law providing for a tax upon the property of corporations engaged in interstate commerce, which property was located within the State, not because the law amounted to a tax on interstate commerce, but because the rate of taxation imposed by the law was not uniform with the rate imposed by law upon other properties similarly taxed. Here the statute described the tax as in the nature of an excise tax or license. But the court held that regardless of the name by which it was called, the substance must be examined, and that it was a property tax, particularly as it was beyond the power of the legis-

lature to impose a license tax upon corporations engaged in interstate commerce. The court says:

> "But where the method adopted is a tax upon property based upon valuation, the rate imposed must be uniform, and apply alike to all who are thus taxed. The property of one citizen may not be taxed at a greater rate than that of another. And, however difficult it may be to obtain equality in other respects, a uniform rate may and must be imposed in this class of taxation."

The court therefore held the law invalid, in that it imposed a uniform rate of two per cent upon the property of the company, while other property of a similar nature was subject to a fluctuating rate, which might be higher or lower than the two per cent

It is true that this decision was rendered under the Constitution before the amendment of 1906. *But it is nevertheless authority for the proposition that whatever basis of classification is adopted, the tax must operate equally upon the members of the same class.* Under the law now before the court, as in the *Canda* case, the basis of the tax is valuation. And yet it allows one person to deduct royalties and does not allow another so to do. Measuring the tax by the royalty is in no essential respect different than classifying the persons taxed according to the royalty which they pay. In other words, classifying them according to private contracts which they have made.

In *Hetland v. Board of County Commissioners*, 89 Minn. 492, the court held unconstitutional a law which classified counties, limiting the operation of the law to such counties as had, at the time of the passage, expended at least seven thousand dollars for court houses purposes, holding that such classification was arbitrary and improper, the purpose of the law being to allow such counties to issue bonds. The court says:

> "The basis of classification cannot be arbitrary or illusive, but must be founded upon such a substantial distinction, having reference to the subject matter of the legislation, between the objects or places embraced in the subject of the legislation and the objects or places excluded, as suggests the necessity or propriety of different legislation for the two in respect to the matter which is the subject of the legislation; second, that the act must include, and act uniformly upon all of the class —that is, all whose conditions and wants reuder such legislation equally appropriate to them as a class."

The court further says, with reference to the act:

> "It is unique, novel, and the first attempt the legislature has ever made to adopt as a basis for legislation the amount of money expended for a given public improvement."

And further:

> "It is limited in its application to counties having a population of one hundred thousand or less; (2) to counties which have entered in-

> to a contract for the erection of a courthouse; (3) to counties that have expended at least $7,000 towards the erection of a courthouse; and all these apply only to such counties as had entered into the contract or expended the money prior to the passage of the act."

Most of the vices here pointed out are present in this occupation tax law, for its effect is limited, or largely limited, by the leases which had been made prior to its passage, and it does not apply at all in cases where the royalties consume the profits, and it applies less in cases where the royalties come near to consuming the profits, and applies most drasticly to owners who pay no royalty.

In *Thomas v. City of St. Cloud,* 90 Minn. 477, the court held unconstitutional a law authorizing the issuance of bonds by a city of ten thousand inhabitants, or less, for the re-purchase of water works, because it adopted an arbitrary basis of classification, in that it was limited in its operation to cities which had owned a system of water works, had sold them and reserved the right, by contract or otherwise, to re-purchase. The court says:

> "Such a basis of classification is purely arbitrary, and, conceding that cities of ten thousand population or less might be so situated as to require a general law upon the subject of purchasing waterworks, such law, to be constitutional, must act uniformly upon all of the class."

In *Minnesota Sugar Company v. Iverson,* 91 Minn. 30, the court held unconstitutional a law

providing for the payment of bounties to the manufacturer of sugar from beets grown in the State. The court here quotes with approval from *Michigan v. Auditor General*, 124 Mich. 674, as follows:

> "The discrimination by the state between different classes of occupations, and the favoring of one at the expense of the rest, whether that one be farming or banking, merchandising or milling, printing or railroading, is not legitimate legislation, and is an invasion of that equality of right and privilege which is a maxim in state government. When the door is once opened to it, there is no line at which we can stop, and say with confidence that thus far we may go with safety and propriety, but no further. Every honest employment is honorable. It is beneficial to the public. It deserves encouragement. The more successful we can make it, the more does it generally subserve the public good. But it is not the business of the state to make discriminations in favor of one class against another, or in favor of one employment against another. The state can have no favorites. Its business is to protect the industry of all, and to give all the benefit of equal laws. It cannot compel an unwilling minority to submit to taxation in order that it may keep upon its feet any business that cannot stand alone. Moreover, it is not a weak interest only that can give plausible reasons for public aid. When the state once enters upon the business of subsidies, we shall not fail to discover that the strong and powerful interests are those most likely to control legislation, and that the weaker will be taxed to enhance the profits of the stronger."

True, the Minnesota case, as well as the Michigan case, were with reference to bounties to be paid by the State. But the language above quoted is equally applicable when it is attempted to single out one industry or one occupation and tax it for the benefit of the others. The net results may be the same whether a bounty is paid to certain industries and all others exempted, or whether the others are taxed and the certain industries exempted.

In *State v. Parr*, 109 Minn. 147, the court held unconstitutional Chapter 248, Laws of Minnesota 1909, entitled "An Act to tax the occupation of and to license hawkers," etc., both as a police regulation, as class legislation and as a tax measure, in that the tax imposed on the occupation of peddling did not fall equally and apply uniformly on all members of the class as required by Section 1, Article 9 of the Constitution. The *Wagener Case* discussed above was cited as an authority. The act divided the state into divisions in each of which the merchants located therein were at liberty to solicit trade for future delivery, but the doors were closed to all other merchants of the state. It also exempted, as did the act considered in the *Wagener case*, persons who sold articles grown or produced by them. The court held that these attempts at classification rendered the act invalid.

As to the first point the court said (p. 151):

"Is it any less a nuisance to the household-

ers of Winona County, and adjoining counties, to be solicited for orders by a Winona house furnishing company, than to be similarly solicited by a Minneapolis furnishing company?"

"One of the fundamental rules controlling legislation of this character is that it must act uniformly upon all within the class. (Citing cases) This law does not act uniformly upon all merchants who solicit orders for future delivery. The division into counties is arbitrary. Merchants of one county may have a great advantage over those of another county, according to the advantages of location."

As to the second classification referred to, it was held improper under the authority of *State v. Wagener, supra.* The court said, with reference to the operation of Section 1, Article 9 of the Minnesota Constitution:

"While removing some of the former restrictions on the methods of taxation, the amendment to article 9 of the constitution (chapter 168, p. 216, Laws 1905) specifically prescribes that taxes shall be uniform upon the same class of subjects. The legislature is not required to provide for the taxation of occupations; but if such a course is pursued, and any occupation is selected for that purpose, then the burden must fall equally upon the members of the class. Mutual Benefit Life Ins Co. v. County of Martin, 104. 179, 116 N. W. 572. The occupation or class designated by the act is that of peddling. Some peddlers are taxed, while others are exempt, and for the reasons above stated the law cannot be

> sustained as a tax measure, any more than as a police regulation."

In *Seamer v. Great Northern Railway Company*, 142 Minn. 376, the court again affirmed the rule as follows:

> "Subjects of legislation are commonly and quite necessarily put into classes. To be valid a classification must rest upon a reasonable basis of distinction. All similarly situated must be brought within the class and all within the class must be treated alike."

In this case the court held the 1915 Railway Act to include all employees of a railway company, whether engaged in the hazardous part of railway operation or not. This decision was reached notwithstanding the previous holding that the fellow servant acts were limited in their operation to those involving railway hazards, but the court here did not depart from the constitutional requirement that classification must rest upon some reasonable basis, but merely held, as to the particular question, that what had once been a reasonable classification was somewhat enlarged by changes in legislation, etc. The decision was undoubtedly induced largely because if the classification had not been enlarged, there would have been a certain limited clas of railway employees who would have been under neither the Workmen's Compensation Law nor the Railway Employers' Liability Act.

In *State v. Minnesota Farmers Mutual*, 145 Minn. 231, the court says:

> "The legislature has a wide discretion in classifying property for the purposes of taxation. But the classification must be based on differences which furnish a reasonable ground for making a distinction between the several classes. The differences must not be so wanting in substance that the classification results in permitting one to escape a burden imposed on another under substantially similar circumstances and conditions. The rule of uniformity established by the Constitution requires that all similarly situated shall be treated alike."

The court therefore held unconstitutional a law which classified mutual insurance companies according to the amount of compensation paid to certain officers, as being no proper basis for classifying such companies for the purpose of taxation. The court also held that the law was unconstitutional because it exempted domestic mutual fire insurance companies from the tax, regardless of the extent of their business or the size of salaries paid to their officers, but imposed a tax on all domestic mutual cyclone companies which paid a salary of more than $2,000 to any officer, the court holding that while fire and cyclone companies insured against different hazards, both were required by the law to be conducted in substantially the same manner, and the court found no substantial reason for saying that a cyclone company which pays a salary of more than $2,000 shall pay the tax, but that a fire company which pays a high salary shall be exempt.

These citations show that the rule of reason and the existence of essential differences in the nature of the subject, as a basis of classification for purposes of taxation, is as fully required under the Constitution of Minnesota as under the Federal Constitution; and they also show that the requirements as to uniformity are the same under both Constitutions.

It should also be borne in mind that the Minnesota Constitution refers specifically to the subject of taxation. So that whatever hesitation this court may have, in general, in disturbing a classification for taxation made by a state legislature, need not exist in the cases at bar, in view of the requirements of the Constitution of Minnesota, as defined by its court of last resort.

It is apparent that all of the arguments advanced relative to the insufficiency of the proposed classification and as to the lack of uniformity in the class selected, under the Fourteenth Amendment, apply with equal force under the Constitution of Minnesota.

The cases above cited, and other cases of similar import, establish that a tax law to be valid must bring all persons or property similarly situated within the class and must operate uniformly upon all persons or property within the class, and we claim that this law violates both of these requirements.

III.

WHETHER OR NOT THE TAX BE AN OCCUPATION TAX IT IS IN ITS ESSENTIAL NATURE A PROPERTY TAX AND VOID FOR LACK OF UNIFORMITY.

We have seen that the tax which the Act seeks to impose, whether regarded as one upon occupations or as one upon property, violates the clause of the State Constitution providing that taxes shall be uniform upon the same class of subjects and also denies to plaintiffs the equal protection of the laws. Many of the considerations which have been urged, apply with special force against the tax considered as a property tax. It is, therefore, important to determine whether this is not in essence a tax upon property regardless of whether it is one upon occupations.

It is elementary that the legislature cannot by giving a tax a particular name or by the use of some form of words take away the duty of the court to consider its real nature and effect. *Pollock v. Farmers' Loan & Trust Co.*, 157 U. S. 429, 581; *Choctaw & Gulf R. R. v. Harrison*, 235 U. S. 292, 298; *Crew Levick Co. v. Pennsylvania*, 245 U. S. 292, 294; *Dawson v. Kentucky Distilleries Co.*, 255 U. S. 288.

It is also fundamental that a physical thing becomes and is property only when owned; that among the attributes of ownership are the rights to possess, to use and enjoy the thing owned and that anything which takes away ownership or any of its

attributes, either wholly or in part, destroys property. *Pumpelly v. Green Bay Co.*, 13 Wall. 166, 179; *Buchanan v. Warley*, 245 U. S. 60; *Sailors Union v. Hammond Lumber Co.*, 156 Fed. 450, 454.

Most things owned can be put to a variety of uses and yet, as the cases cited above show, a deprivation of one of the uses is a deprivation of property. Certainly then it would be held that to deprive an owner or lessee of ore of the right to mine would be a deprivation of property for mining is the *only* use to which ore as it lies in the ground can be put. In reason it follows that a tax on the business of mining is a tax on the property itself.

This theory of property is not fanciful. It is made plain and finds a very practical application in *Dawson v. Kentucky Distilleries Co.*, 255 U. S. 288. There Kentucky imposed a tax on persons engaged in the business of owning and storing whisky in bonded warehouses amounting to 50 cents a gallon on whisky withdrawn from bond or transferred in bond to points outside the state. The Attorney General conceded that if the tax were a property tax, it then violated the state constitutional provision because it was not "uniform upon all property of the same class subject to taxation." The question, therefore, was exactly the same as that we are now considering. The Supreme Court held the tax to be one on property, and said by Mr. Justice Brandeis (pp. 294-5):

> "The tax might be said to be upon the act of removal from the bonded warehouse within the state. But, as stated by the lower court,

> *'the thing really taxed is the act of the owner in taking his property out of storage into his own possession (absolute or qualified) for the purpose of making some one of the only uses of which it is capable, i. e., consumption, sale or keeping for future consumption or sale. * * * The whole value of the whisky depends upon the owner's right to get it from the place where the law has compelled him to put it, and to tax the right is to tax the value.'* To levy a tax by reason of ownership of property is to tax the property. Compare Thompson, Auditor, v. Kreutzer, 112 Miss. 165, 72 South. 891; Thompson, Auditor, v. McLeod, 112 Miss. 383, 73 South. 193, L. R. A. 1918C, 983, Ann. Cas. 1918A, 674."

This court further called attention to the analogy with the case of *Heyman v. Heys,* 236 U. S. 178, and the fact that the tax under consideration in the *Dawson Case,* while a property tax might also be invalid as a tax upon the occupation in these words:

> "As we hold the tax to be one on property and it is conceded that, if it be such, it is invalid under the state constitution, we have no occasion to consider whether it would be also invalid under the state constitution as a license or excise tax, because confiscatory; compare *Owen County v. F. & A. Cox Co.,* 132 Kentucky 738, 743; *City of Louisville v. Pooley,* 136 Kentucky 286; *Salisbury v. Equitable Purchasing Co.,* 177 Kentucky 348, 351, 354; or for other reasons. *Nor need we consider whether it is not also obnoxious to the Federal Constitution as imposing a burden upon inter-*

state commerce. Compare Heyman v. Heys, 236 U. S. 178."

By use of the foregoing language we understand that this court clearly indicated that the tax in question might be at the same time a property tax and a tax on an occupation because upon the only possible use or enjoyment of the property in question.

The District Court elaborated the subject somewhat more fully than does this court. It said (274 Fed. 420, 432-3):

> *"The objection to this tax goes deeper. It provides in effect, that the owner of property situated in Kentucky and who has not embarked that property in any business carried on in Kentucky may not have his property, for sale or use or to carry into some other state until he has paid a special tax upon it of a half or a third of its value in addition to all other ordinary and regular taxes.* When this law was passed and given immediate effect, there were supposed to be 30,000,000 gallons of whisky in store in bond in the state. Upon this the owners had paid the regular ad valorem tax every year, and had paid or were liable to pay the regular excise tax of two cents per gallon imposed upon the business of manufacture. * * * *This tax is imposed, not upon the business of storing, but upon the single business of 'owning and storing * * * and in removing.' The tax is the same whether the storage has been for one day or for a period of years, upon the defendants' construction, which we are now assuming. Out of several successive*

owners of warehouse receipts who would thus engage in the storing business, all but the last one go free. The thing really taxed is the act of the owner in taking his property out of storage into his own possession (absolute or qualified) for the purpose of making some one of the only uses of which it is capable, i. e., consumption, sale or keeping it for future consumption or sale. We cannot escape the conviction that it was the real purpose of those who drafted this law to levy a substantial tax upon this great body of property, as property, and that the form of an occupation or excise tax was adopted in order that an object might be accomplished which the Kentucky Constitution forbade. It is a property tax in the clothes of an excise. The whole value of the whisky depends upon the owner's right to get it from the place where the law compelled him to put it, and to tax the right is to tax the value."

There is no distinction in principle between removing whisky from a bonded warehouse and removing iron ore from a mine. The *Dawson Case* is so in point on its facts and the language of the District and Supreme Courts is so apt to our case, that it puts to rest any doubt that might otherwise exist that the present tax is a property tax.

In *Brown v. Maryland*, 12 Wheat. 419, 444, Chief Justice Marshall held that a tax on the occupation of importing was the same as a tax on the imports.

Pollock v. Farmers' Loan & Trust Co., 157 U. S. 429, while not exactly in point on facts, is sugges-

tive. There it was held that a tax on the rents or income from land, or as the court puts it, "the annual user of real estate," is a tax on the land itself. The court said by Mr. Chief Justice Fuller (p. 580, 1):

> "Unless, therefore, a tax upon rents or income issuing out of lands is intrinsically so different from a tax on the land itself that it belongs to a wholly different class of taxes, such taxes must be regarded as falling within the same category as a tax on real estate *eo nomine*. The name of the tax is unimportant. The real question is, is there any basis upon which to rest the contention that real estate belongs to one of the two great classes of taxes, and the rent or income which is the incident of its ownership belongs to the other? We are unable to perceive any ground for the alleged distinction. An annual tax upon the annual value or annual user of real estate appears to us the same in substance as an annual tax on the real estate, which would be paid out of the rent or income. This law taxes the income received from land and the growth or produce of the land. Mr. Justice Paterson observed in *Hylton's case*, 'land, independently of its produce, is of no value,' and certainly had no thought that direct taxes were confined to unproductive land."

If a tax upon the annual user of the land when that user or enjoyment takes the form of receiving rents and income therefrom, is a tax upon property, then much more clearly would a tax upon the use of the property itself be a tax upon the property.

Similarly, this court in *Gillespie v. Oklahoma*, 257 U. S. 501, in effect said that a tax upon the profits of a lease of Indian lands was a tax upon the lease.

In *Thompson v. McLeod*, 73 So. (Miss.) 193, Mississippi imposed an "occupation fee" upon persons pursuing the business of extracting turpentine from standing trees amounting to one-fourth of one cent each year for each cup or box. Here again the crucial question was whether this was a property tax, for if such, it was conceded to be a violation of the uniformity clause of the State Constitution. The Supreme Court of Mississippi held the tax to be one on property. This decision by its reasoning alone commands respect, but its prestige is heightened by being cited favorably in the *Dawson Case*, just referred to. Stevens, J., speaking for the court, said (p. 194):

> "The imposition of such a tax is not on a business, but on the property involved. Here we have a citizen of our State who owns and operates his own turpentine distilleries, who owns the pine trees which produce the resin, the crude product, without which his distilleries cannot be operated, and although he pays ad valorem taxes upon his land and standing trees at their true value, and although he pays a privilege tax for the right to manufacture spirits of turpentine from the annual product of the trees, he is now called upon to pay an additional tax of one-fourth of one cent on each box cut or chopped on the trees, and it requires no refinement to observe at once that

this is an additional burden of taxation operating, not indirectly, but directly upon complainant's property. * * *

This act strikes down the inherent right of the property owner to lay hand upon his own property. Every owner of a pine tree enjoys the same natural right to extract gum from the tree as the owner of a vineyard has to pluck his own grapes. It would be the same thing to require a privilege tax as a precedent right of the owner to pull the ripe pecans from his pecan orchard or to enjoy a drink of pure water from the cool spring of the old homestead."

In *Thompson v. Kreutzer,* 72 So. (Miss.) 891, also cited in the *Dawson Case,* Mississippi imposed an occupation fee of 20¢ per acre on persons, etc., "pursuing the business of buying, owning or holding more than one thousand acres of timber land or lands in this State." The Supreme Court of Mississippi, holding this to be a property tax, said by Smith, C. J. (p. 891, 2):

"Property may also be, and in the section of the Constitution here under consideration is, used to signify 'things owned.' In order that a thing may be owned, some one must, of course, have a right to the ownership thereof. A tax on a thing is a tax on all its essential attributes; and a tax on an essential attribute of a thing is a tax on the thing itself. So that, a tax on a thing owned is necessarily a tax on the right of ownership thereof; and a tax on the right of ownership of a thing is necessarily a tax on the thing itself. No definition of property can be framed which does not include the right of ownership. Consequently, no tax

can be imposed on the right of ownership which is not also a tax on property.

Another fact lends force to the argument that the present so-called occupation tax is also in effect a property tax. When a legislature imposes a true occupation tax, any person may avoid the tax by refraining from engaging in the particular occupation in the State. But this element of volition is wholly lacking in the present tax. Ore lying in Minnesota cannot be mined in any other state. An owner of Minnesota iron ore lands, to use his ore at all, must mine here and under the law pay his tax to the state for pursuing this "occupation" here, which he could not, if he would, pursue elsewhere.

A like argument to this weighed with the District Court in the *Dawson Case* for it said (274 Fed. 434):

> "Another special consideration tends to persuade to the same end. *An excise or occupation tax, ordinarily, is imposed not merely upon a privilege which the legislature may grant or withhold, but upon a privilege which the prospective taxpayer may accept or decline. Not so here. The owners of whisky in bond in Kentucky, when this law was passed, could not refuse to engage in the business of storing it in Kentucky, if they did not wish to pay the tax. The law was given immediate effect, to the effect that and in order that they could not decline. Like the Ancient Mariner's audience, they 'cannot choose but' stay.*"

It may be observed in this connection that the leases under which these particular appellants operate existed before the enactment of this law, and that these appellants had the right to mine and remove ore thereunder before the law was passed; also that the mines owned in fee were so owned prior to the passage of the act. Before the law was enacted the appellants were entitled to convert their ore deposits into merchantable ore upon payment of certain mining costs and, when operated under lease, of certain royalty charges to the fee owners. The right to mine the ore was an incident of their ownership—in fact, ownership without this right would be a liability rather than an asset. In mining the ore these appellants are merely doing what it is necessary to do to make certain inert masses of mineral deposits valuable to them, by making the same available for use in the manufacturing processes of the nation. Only if and when mined do these ore deposits become merchantable ore, the subject of commerce and use, and thus attain a recognized commercial value.

We have seen that under the authorities it matters not what name is given to a tax, that the courts will construe it for what it is, and that a tax which is inseparable from and incident to an ownership of the ore is in effect a tax upon the property.

An analysis of the act imposing this tax clearly shows this:

(a) It is imposed according to the valuation of the ore;

(b) It is imposed only on those who have a property interest in the ore;

(c) It is imposed whether the ore is sold or not;

(d) It is not imposed on those engaged in the business of mining by contract;

(e) It is not imposed according to the amount of business done;

(f) It is not imposed on those who do not have a taxable value left after the deductions;

(g) It is no less a property tax because there are deductions, for subtracting deductions merely creates a lack of uniformity without changing the character of the tax.

Considering the above points in more detail, it is clear that the tax is levied on the basis of valuation of the ore. It is not claimed by the State that it is imposed on contract miners or on contracting firms who merely mine ore at so much per ton Indeed, in the argument in the lower court counsel for the respondents admitted, and in fact claimed, that the act did not apply to underground or open pit contract miners. We understand the State takes no other position here. No other position could well be taken, for the tax might well be the whole contract price of these people for mining and would be confiscatory as to them. It is inseperable from the ownership of the ore and could be paid by no one but an owner.

The tax is imposed whether the ore is sold or not. It is therefore imposed on an owner of the ore for

the right to dig and use it. The right to dig and use is a property right, as one of the incidents of ownership. A tax on an incident of ownership of property is a tax on property.

It is not a tax on the business of selling or earning commissions for handling ore. Anyone engaged in the business of buying and selling or merely handling ore is exempt from the tax no matter how much they make. The tax is leveled at the "mining or producing," which is a right attaching as one of the property rights of ownership.

The tax is not imposed according to the business done. An enormous business in mining and producing ore may be carried on with no tax, provided the deductions of royalties or other items equal the value at the surface. It is therefore not a tax according to the business done.

If there were no deductions it would bear every resemblance to an ordinary property tax based on value. The deductions do not make it any less a property tax, but do create a lack of uniformity upon the same class of subjects. Such lack of uniformity does not show that it is not a property tax even though called an occupation tax. Making a property tax not uniform cannot make it thereby more an occupation tax, even by calling it so.

If there were any profit in the physical act of digging the ore from its place in the mine and putting it at the surface of the earth it is not that profit that the law seeks to reach or reaches. For admittedly the miners and contractors engaged in

that business, who have no property interest in the mine, are not taxable under the law for any profit they may make. Furthermore they could not be, for the basis of the tax is the property value at the surface and with this they are in nowise concerned, and they may make a profit or suffer a loss regardless of that value, and the tax might equal their entire contract price. This demonstrates that the tax is aimed at and reaches the property interest or value.

It will not do to say that this is a privilege or license tax upon the business, occupation or privilege of getting the ore to the surface of the earth and measured by the value of that privilege. If so, it should apply to those who do that work, having no property interest in the ore.

The tax is aimed at the taxpayer's property interest, absolutely regardless of whether he proposes to sell the ore or keep it himself on the same property.

In practical and legal effect it means that when any property is mined out the owner, who causes the ore to be mined out, has to pay the State six per cent of the value of his interest in the ore in the ground, in addition to all ad valorem taxes which are also assessed on a higher basis than any other taxes on any property.

We say, therefore, that we must look through the form to the substance to find what this law is, and that we find it is a tax inseparable from the ownership of the property, levied according to the value of the taxpayer's property interest therein, subject

to certain deductions, which deductions do not make it less a property tax but do destroy all uniformity and, aside from its being double taxation, defeat its validity.

There is no question but that the legislature of Minnesota intended to impose, by this law, a property tax, and to attempt to get around constitutional objections by calling it an "occupation tax." Since 1907, or earlier, there has been a constant agitation in the southern portions of the State for a so-called tonnage tax, or tax for the benefit of the State on iron ore. Numerous tonnage or iron ore tax bills of every description have been introduced in the legislature, and prior to 1921 two had been passed by the legislature, one vetoed by Governor Johnson and the other vetoed by Governor Burnquist. The cry was that iron ore was a natural heritage, that it was a species of property that had not been created or its value added to by the work of man, and that it should be taxed for the benefit of the State and all the people. Many of the bills introduced provided for a direct heavy tonnage tax upon iron ore, some of them in lieu of all other taxes, some of them in addition to all other taxes.

This argument that the ore deposits of Minnesota are a "heritage" of the people and that the people of the State should share in them caused the same Legislature that passed the tax here in question to pass an Act calling for submission to the people of a constitutional amendment by which the money derived from this tax would not all be spent

year by year but 50% of it would be placed in the permanent school and university trust funds for the benefit of future generations, only the interest thereof being used from year to year. This amendment, adopted by vote of the people November 7, 1922, is set forth in full under Point I (C) above.

It is apparent that the act that we are here considering could not be passed now that this constitutional amendment has been adopted, since that amendment is mandatory and provides for a different method of apportioning the funds derived from the tax imposed by this law.

It is significant that the amendment provides for the levy of a tax direct on the valuation of all ore mined instead of levying a tax equal in amount to a percentage of the valuation of all ore mined and we think this further emphasizes the point we are now arguing that the tax, by whatever name called, is essentially a tax on the property; for clearly a tax on the valuation of the ore, as the amendment provides, is a tax on the ore itself.

It will be noted that there is no limit imposed by the amendment on the percentage or amount of the tax that may be levied.

This court will in the case at bar consider the arguments stated in the Tax Commission's report and in the messages of the Governors and the obvious purposes of the constitutional amendment, in determining the real nature of the tax here in question, just as this court in the case of *Dawson v. Kentucky Distilleries Co.*, 255 U. S. 288, considered

and gave weight to an emergency clause of the act there in question, which read:

> "And whereas, the liquor which they are handling and in which they are dealing is constantly in large quantities being removed from the bonded warehouses and disposed of, without the state securing an adequate license tax thereon, an emergency is hereby declared to exist."

Concerning this clause, Mr. Justice Brandeis said (p. 294):

> The language of the emergency clause in the act discloses that the Legislature considered that it was, in fact, taxing the whisky."

The gist of the argument is that the iron ore ought of right to belong to the state, and the gist of the discussion by those who have insisted upon its taxation differently from other property is that it should in some way be acquired by the state, through taxation. This, of course, overlooked the fact that the state never in the first instance owned the iron ore, but that those who owned this species of property acquired it originally from the government, in the same way as valuable farm land or timber land, or any other species of property, was acquired. The true fact is that there has never been any disposition on the part of the legislature to tax merely the business or occupation of mining. That was recognized as a business or occupation advantageous to all the people of the state, furnishing outlet for supplies and putting money into circulation. But the purpose was to tax the property

value in the iron ore, and that is exactly what the legislature has done in this act. It is clear that the tax is levied, not merely on the occupation of mining, but is directly levied and collected out of the property value of the owner of the mine.

We have thus demonstrated under this subdivision of our brief that the tax in question is essentially a tax upon property and we have shown under point II (B) that as a tax upon property it is void for lack of uniformity under both the 14th Amendment to the Federal Constitution and Section 1 of Article 9 of the State Constitution.

For the foregoing reasons we urge that Chapter 223, Laws of Minnesota, 1921, and the tax thereby sought to be imposed upon these appellants are unconstitutional and void and that the judgment of the District Court should be reversed.

Respectfully submitted,

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APPENDIX A.

Chapter 223, Laws of Minnesota 1921.

H. F. No. 760.

An act providing for the imposition of a tax upon persons, co-partnerships, companies, joint stock companies, corporations, and associations however organized engaged in the business of mining or producing iron ore and other ores, for enforcing and collecting the same and prescribing penalties for the violation thereof.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. *Occupation tax of 6% on iron ore.*—Every person engaged in the business of mining or producing iron ore or other ores in this state shall pay to the state of Minnesota an occupation tax equal to 6 per cent of the valuation of all ores mined or produced, which said tax shall be in addition to all other taxes provided for by law, said tax to be due and payable from such person on May 1 of the year next succeeding the calendar year covered by the report thereupon to be filed as hereinafter provided.

Sec. 2. *Value of ore—How ascertained.*—The valuation of iron or other ores for the purposes of determining the amount of tax to be paid under the provisions of Section 1 of this act shall be ascer-

tained by subtracting from the value of such ore at the place where the same is brought to the surface of the earth, such value to be determined by the Minnesota tax commission:

1. The reasonable cost of separating the ore from the ore body, including the cost of hoisting, elevating, or conveying the same to the surface of the earth.

2. If the ore is taken from an open pit mine, an amount for each ton of ore mined or produced during the year equal to the cost of removing the overburden, divided by the number of tons of ore uncovered, the number of tons of ore uncovered in each such case to be determined by the Minnesota Tax Commission.

3. If the ore is taken from an underground mine, an amount for each ton of ore mined or produced during the year equal to the cost of sinking and constructing shafts and running drifts, divided by the number of tons of ore that can be advantageously taken out through such shafts and drifts, the number of tons of ore that can be advantageously taken out in each such case to be determined by the Minnesota Tax Commission.

4. The amount of royalties paid on the ore mined or produced during the year.

5. A percentage of the ad valorem taxes levied for said year against the realty in which the ore is deposited equal to the percentage that the tons mined or produced during such year bears to the total tonnage in the mine.

6. The amount or amounts of all the foregoing subtractions shall be ascertained and determined by the Minnesota Tax Commission.

Sec. 3. *Mining companies to report annually.*—Every person engaged in such mining or production of ores shall, on or before the first day of February, 1922, and annually thereafter on or before the first day of February of each year, file with said commission under oath a correct report in such form and containing such information as the tax commission may require, covering the preceding calendar year.

Sec. 4. *Tax commisson to determine tax.*—Upon receipt by the Minnesota tax commission of such report it shall determine from such information as it may possess or obtain whether the same is correct or otherwise, and if found correct, said tax commission shall, on or before May 1, find and determine therefrom the amount of tax due from such person.

Sec. 5. *Same when report is incorrect.*—Upon receipt by the Minnesota tax commission of such report it shall determine from such information as it may possess or obtain whether the same is correct or otherwise, and if found incorrect, from such information as it may possess or obtain, it shall find and determine the amount of tax due from such person.

Sec. 6. *Procedure when no report is filed—Penalty for failure to report.*—If any person, subject

to this act, shall fail to make the report provided for in section 3 hereof at the time and in the manner therein provided, the tax commission shall in such case, upon such information as it may possess or obtain, ascertain the kind and amount of ore mined or produced, together with the valuation thereof, and shall thereon find and determine the amount of the tax due from such person, and there shall be added thereto a penalty for failure to report, which penalty shall equal ten per cent of the tax imposed and shall be treated as a part thereof.

Sec. 7. *Determination by tax commission of amount of tax shall be prima facie evidence.*—Findings and determination by the Minnesota tax commission, as to the amount of taxes due under the provisions of this act, shall be in all courts, for all purposes, prima facie evidence of the facts therein stated.

Sec. 8. *Tax commission shall certify amount of tax to state auditor.*—The Minnesota tax commission shall enter on its records the amount of taxes found and determined by it to be due from any person, as herein provided, and on or before May 1 shall certify such amount to the state auditor; who thereupon shall make his draft upon such person for the amount of taxes as thus certified, and place the same in the hands of the state treasurer for collection.

Sec. 9. *Due before June 1st each year—Penalties for non-payment.*—In case the tax herein provided for is not paid before the first day of June

of the year when due and payable, a penalty of ten per cent thereof shall immediately accrue, and thereafter one per cent per month shall be added to such tax and penalty while such tax remains unpaid.

Sec. 10. *State auditor's draft prima facie evidence of amount due.*—The draft of the state auditor for the tax or tax and penalties imposed by the foregoing provisions of this act shall be prima facie evidence in any court where proceedings may be brought for its enforcement that the amount therein stated is due the state from the person against whom the same is drawn.

Sec. 11. *Attorney general to collect unpaid drafts.*—On July 1 of each year the state treasurer shall deliver to the attorney general all unpaid drafts for taxes imposed under this act, and it shall be the duty of the attorney general to bring an action thereon in the district court of Ramsey county, or of the county where such ores are mined or produced, for the amount of such draft, together with interest, penalties and costs. The judgment of the court when so obtained shall bear interest at the rate of one per cent per month and be enforceable in the manner provided by law for the enforcement of judgments obtained in civil actions.

Sec. 12. *Penalty for false return.*—Any person who for the purpose of evading the payment of the tax hereinbefore provided, or any part thereof, makes any false return or report under Section 3 hereof, shall pay to the state a penalty of fifty per

cent of the amount of said tax; and any one who shall knowingly make or sign under oath any false return of the kind and amount of ores produced therefrom, and of the value thereof, or who shall knowingly submit any other false information required by this act, shall be deemed guilty of perjury, and upon conviction thereof shall be punished therefor as provided by law.

Sec. 13. *Records of companies to be open to inspection.*—All books, waybills, inventories, correspondence and memoranda relating to or used in the transaction of the business of any person owning or operating any such mine or mines, shall on demand by the Minnesota tax commission or its authorized representatives, be open to its inspection or examination. If any one having charge, control or possession of said papers and books of such person shall neglect or refuse on demand of the said tax commission or its authorized representatives access to the papers and books aforesaid, he or they shall be deemed guilty of a gross misdemeanor, and upon conviction thereof shall be punished therefor as provided by law.

Sec. 14. *Taxes to be credited to general revenue fund.*—All taxes imposed and collected under the foregoing provisions of this act shall be paid into the state treasury and credited to the general revenue fund.

Sec. 15. *Unconstitutionality of one section not to affect others.*—Should the courts declare any section or provision of this act unconstitutional or

unauthorized or in conflict with any other section or provisions of this act, then such decision shall affect only the section or provision declared to be unconstitutional or unauthorized and shall not affect any other section or part of this act.

Sec. 16. *Definitions.*—For all purposes of this act the word "person" shall be construed to include individuals, co-partnerships, companies, joint stock companies, corporations, and all associations however and for whatever purpose organized.

Sec. 17. This act shall take effect and be in force from and after its passage.

Approved April 11, 1921.

APPENDIX B.

Section 1988 General Statutes of Minnesota 1913.

Classification of Property—What Percentage of Full and True Value to be Assessed.—All real and personal property subject to a general property tax and not subject to any gross earnings or other lieu tax is hereby classified for purposes of taxation as follows:

Class 1. Iron ore whether mined or unmined shall constitute class one (1) and shall be valued and assessed at fifty (50) per cent of its true and full value. If unmined it shall be assessed with and as a part of the real estate in which it is located, but at the rate aforesaid. The real estate in which iron ore is located, other than the ore, shall be classified and assessed in accordance with the provisions of classes three (3) and four (4) as the case may be. In assessing any tract or lot of real estate in which iron ore is known to exist the assessable value of the ore exclusive of the land in which it is located, and the assessable value of the land exclusive of the ore shall be determined and set down separately and the aggregate of the two shall be assessed against the tract or lot.

Class 2. All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family,

and all personal property actually used by the owner for personal and domestic purposes, or for the furnishing or equipment of the family residence, shall constitute class two (2) and shall be valued and assessed at twenty-five (25) per cent of the full and true value thereof.

Class 3. Live stock, poultry, all agricultural products, stocks of merchandise of all sorts together with the furniture and fixtures used therewith, manufacturers' materials and manufactured articles, all tolls, implements and machinery whether fixtures or otherwise, and all unplatted real estate, except as provided by class one (1) hereof, shall constitute class three (3) and shall be valued and assessed at thirty-three and one-third (33 1/3) per cent of the true and full value thereof.

Class 4. All property not included in the three preceding classes shall constitute class four (4) and shall be valued and assessed at forty (40) per cent of the full and true value thereof.

FILE
DEC 4 1
WM. R. STAN

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 560.
OLIVER IRON MINING COMPANY, Appellant,
vs.
SAMUEL LORD ET AL.

No. 561.
CLEVELAND-CLIFFS IRON COMPANY, Appellant,
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No. 562.
MESABA-CLIFFS IRON MINING COMPANY, Appellant,
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No. 565.
THE BIWABIK MINING COMPANY ET AL., Appellants,
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SAMUEL LORD ET AL.

No. 566.
INTER-STATE IRON COMPANY, Appellant,
vs.
SAMUEL LORD ET AL.

BRIEF OF APPELLEES.

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BRIEF OF APPELLEES.

STATEMENT OF CASE.

Thirty-seven mining companies which in 1921 operated practically all of the iron mines in Minnesota have by appeal brought to this court for review the correctness of decrees rendered by the District Court of the United States for the district of Minnesota, the effect of which decrees was to hold valid and constitutional Chapter 223, Laws of Minnesota 1921, which imposed an annual occupation tax on persons or corporations engaged in mining iron ore, or other ores, in Minnesota, the tax to be computed on the basis of six per cent. of the value of all ores produced after deduction of the principal costs of mining. (The law is printed as appendix A of appellants' brief.)

STATEMENT OF FACTS.

The facts presented for consideration are contained chiefly in a short agreed statement found at pages 28 to 35 of the record. Nothing is to be gained by repeating all of that statement here. It will be helpful, however, to describe in a general way the two methods of mining employed in Minnesota since we shall have occasion from the beginning of the argument to refer to "underground" mining and to "open pit" mining; terms which are used in the law, and which will be found frequently in the record.

The iron ore of Minnesota lies at different depths below the surface of the earth. If the depth is great it may be practical and economical to mine it only by means of underground workings. If the ore lies near the surface and is present in sufficient quantities, and if other factors usually of lesser importance are present, it becomes practical and economical to mine it by the open pit method.

Underground mining is the digging and hoisting of ore in shafts, tunnels and drifts, employing for that purpose manual labor and only such machinery as hoisting apparatus and the like. This is the method made familiar by its customary employment in mining for the more precious metals, and needs no further description.

Open pit mining, instead of going into the earth and digging the ore therefrom, removes the earth from the ore bodies, leaving it exposed to surface

operations. This procedure of excavating the earth to the ore deposits is referred to as "stripping" or removing the "overburden." The chief element of economy inducing the choice of this method of mining is that after a sufficient part of the surface has been removed steam shovels may be lowered to the ore body itself and operated at a great saving as compared with the cost of hand labor employed in separating the ore in the more restricted underground workings. After the overburden has been removed, assuming that the non-mineral matter is stripped from the entire surface of the area to be mined, the further process of mining consists of constructing railway tracks at practical grades from the surface to the ore body, the separation of the ore by the use of steam shovels and the loading thereof directly from the steam shovel to the cars. The extensive nature of the work of removing the overburden is illustrated in the stipulated fact that in some instances mining companies have removed the earth to a depth of 150 feet in order to reach ore bodies at a cost of more than $2,000,000. (p. 30.)

Appellants calculate that slightly more than 26 per cent. of all ore mined in the state is produced from underground workings and that slightly more than 73 per cent. is taken from open pit mines.

Attention should be called at this point to a further fact appearing in the record which is characteristic of mining methods in Minnesota. Iron lands are explored, developed and mined under leases which permit of such exploring, develop-

ment and mining and the removal of ore therefrom upon the payment of rentals commonly called "royalties." These mining leases are in general use, and among the customary provisions is the one of basing the rental upon the number of tons of ore removed, although the price to be paid varies greatly, ranging from 12½ cents to $1.25 per ton (p. 29). In 1921 all mines in operation were worked under such leases. The stipulation is that in more typical years all mines operated, except six, were so operated.

ARGUMENT.

Appellants argue at page 110 of their brief that the tax imposed by the law under consideration is a property tax and not an excise or occupation tax. They assert that the law violates both the Federal Constitution and the State Constitution whether it be considered either one form of a tax or the other. But they say that some of their arguments apply with greater force if they are right as to the nature of the tax. In their argument under the Interstate Commerce Clause they assert the law is one imposing a tax upon ore as it is about to be shipped in interstate commerce rather than a tax upon persons engaged in the business of producing iron ore. It is logical, we think, to consider, before taking up the various arguments, what the true nature of the tax is. We shall, therefore, first consider whether the law imposes an occupation tax upon persons engaged in the business of mining, or whether it imposes a property tax upon iron lands or iron ore.

The Tax Is an Excise, and More Specifically an Occupation Tax, and Not a Property Tax.

We assert that it is clear beyond all question that the law provides for an occupation tax and not a property tax.

In the terms of the law "an occupation tax" is imposed upon "every person engaged in the business of mining," "equal to" six per cent. of the "valuation" of all ores mined "in addition" to "other taxes." There is no tax unless the business of mining is engaged in. It is computed only on the output of mining; no other gains are included. There is no tax unless the value of the output exceeds the major expenses of conducting the necessary mining operations. It is assessed in addition to property taxes. And it is not laid in accordance with the customary ad valorem method of applying a rate, varying with requirements, to a gross valuation, on a fixed date. These features distinguish it as an occupation tax.

Spreckles Sugar Refining Co. v. McClain, 192 U. S. 397, 412, 413;

Armour Packing Co. v. Lacy, 200 U. S. 226, 233, 235;

Flint v. Stone-Tracy Co., 220 U. S. 107, 145, 150;

Stratton's Independence v. Howbert, 231 U. S. 399, 416;

Ohio Tax Cases, 232 U. S. 576;

Choctaw & Gulf R. R. v. Harrison, 235 U. S. 292, 299;

Stanton v. Baltic Mining Co., 240 U. S. 103, 114;

American Mfg. Co. v. St. Louis, 250 U. S. 459, 463;

Bowman v. Continental Oil Co., 256 U. S. 642, 648, 649.

Mass. Bonding & Ins. Co. v. Chorn, 274 Mo. 15, 30;

Underwood Typewriter Co. v. Chamberlain, 94 Conn. 47, 54, 55 (This case was subsequently affirmed by this Court in 254 U. S. 113);

Conn. Ins. Co. v. Commonwealth, 133 Mass. 161, 166;

Kittanning Coal Co. v. Commonwealth, 79 Pa. St. 100, 104;

State v. Telegraph Co., 73 Maine, 518, 528;

Producers' Oil Co. v. Stephens, 44 Tex. Civ. App. 327, 333.

The specific reason assigned by appellants, and the one principally relied on, for maintaining that the tax is one on property rather than an occupation tax, is that there is no value in mineral lands apart from the right to extract the ore; that the extraction of the ore is nothing more than an exercise of the right of appellants to own and use their lands, and that a tax upon the right of ownership is a tax upon the land or a tax upon the ore. They rely on Dawson v. Kentucky Distilleries, 255 U. S. 288, in which this Court held that a tax upon the

right of an owner to remove whiskey from bonded warehouses, where the law compelled him to put it, although labeled an excise tax was in truth one upon the whiskey. But mining in Minnesota amounts to something more than merely scooping up iron ore from a tract of land on which it is stored. In between there is a great and profitable industry which, employing labor and skill and a large amount of capital in the enterprise, develops and excavates the iron-bearing property, produces merchantable iron ore therefrom, and makes the loading of ore in cars possible.

A tax imposed upon that business is not a tax upon either the land or the ore which is produced. This same argument was presented to this Court in Stratton's Independence v. Howbert, 231 U. S. 399, supra, and in Stanton v. Baltic Mining Co., 240 U. S. 103, supra, and was decisively rejected as the following excerpts from the opinions in those cases will show.

In Stratton's Independence v. Howbert this Court, in considering the Corporation Tax Law of 1909 imposing a tax on certain corporations, including mining companies, equal to one per cent. of their net income, at page 414 said:

> "As has been repeatedly remarked, the Corporation Tax Act of 1909 was not intended to be and is not in any proper sense an income tax law. This court had decided in the Pollock Case that the income tax law of 1894 amounted in effect to a direct tax upon prop-

erty, and was invalid because not apportioned according to population as prescribed by the Constitution. The act of 1909 avoided this difficulty by imposing not an income tax, but an excise tax upon the conduct of business in a corporate capacity, measuring, however, the amount of tax by the income of the corporation, with certain qualifications prescribed by the Act itself. Flint v. Stone-Tracy Co., 220 U. S. 107; McCoach v. Minehill Co., 228 U. S. 295; United States v. Whitridge, (decided at this term, ante, p. 144).

For this and other obvious reasons we are little aided by a discussion of theoretical distinctions between capital and income. Such refinements can hardly be deemed to have entered into the legislative purpose. Of course, if it were demonstrable that to read the act according to its letter would render it unconstitutional, or glaringly unequal, or palpably unjust, a reasonable ground would exist for construing it according to its spirit rather than its letter. But in our opinion the act is not fairly open to this criticism. *It is not correct; from either the theoretical or the practical standpoint, to say that a mining corporation is not engaged in business, but is merely occupied in converting its capital assets from one form into another.*" (Italics ours.)

In Stanton v. Baltic Mining Co., supra, this Court, in sustaining, as to mining companies, the act of Congress of Oct. 3, 1913, levying a tax equal to one per cent. of gross receipts after deducting certain losses and expenses, and in dealing with the argument that the Act imposed an income tax,

rather than an excise or occupation tax, at page 114 said:

> "It moreover rests upon the wholly fallacious assumption that looked at from the point of view of substance a tax on the product of a mine is necessarily in its essence and nature in every case a direct tax on property because of its ownership unless adequate allowance be made for the exhaustion of the ore body to result from working the mine. We say wholly fallacious assumption because independently of the effect of the operation of the Sixteenth Amendment it was settled in Stratton's Independence v. Howbert, 231 U. S. 399, that such a tax is not a tax upon property as such because of its ownership, but a true excise levied on the results of the business of carrying on mining operations (pp. 413, et seq.)."

These authorities completely dispose of appellants' contention. But there is the other feature which is distinctive of mining in Minnesota, referred to in our statement of facts, which the legislature undoubtedly had in view in levying a tax upon the business of mining rather than upon mineral lands or upon ore. In 1921 not a single mine owner was engaged in the business of mining. It is, and long has been, the customary practice of owners to lease lands which may contain ore and to allow others to enter upon the venture of discovering and mining the ore bodies. The mining companies merely enter upon the land as tenants and pay rent.

Von Baumbach v. Sargent Land Co., 242 U. S. 503;

United States v. Biwabik Mining Co., 247 U. S. 116;
State v. Evans, 99 Minn. 220;
Boeing v. Owsley, 122 Minn. 190;
State v. Royal Mineral Ass'n, 132 Minn. 232;
State v. Cavour Mining Co., 143 Minn. 271;
In re Rust's Estate, 213 Mich. 138;
City of Saginaw v. Bank, 213 Mich. 590.

The profits of mining accrue to the mining companies. The owner receives only his stipulated royalty whether the ore is mined with much or with little profit. On the other hand, the mining companies own no part of the land and own none of the ore. They have, under their leases, the right to locate, extract and appropriate the ore that is in the ground. What value there is in the ore comes to them and is made available to them in the process of mining. They do not merely convert ore which is theirs in the form of real estate to ore which they may dispose of in the form of personal property. And the profit to them is not represented by the difference in the value of the ore in the ground and its value after there has been expended upon it the additional labor and capital necessary to make the conversion. As to the mining companies, ore which was not previously theirs becomes their property when they mine it. So far as the mining companies are concerned the ore, in all its value, is produced by the mining operation. It was logical and appropriate, therefore, that the legislature of Minnesota impose an occupation tax upon

the business of mining rather than a tax directly upon iron ore produced during the year, and it was logical and appropriate that this tax be measured by a valuation of the ore produced, and with these facts in view there is no warrant for saying that this tax is one upon the ore because the value of the ore is made a factor in the measurement of the tax, or because it is imposed only upon those who have a property interest in the ore.

We submit that we have to do with a true excise tax upon the business of mining and not a tax upon mineral lands or iron ore.

We now proceed to discuss the grounds on which the law is challenged and shall do so without insisting at every point where appellants assume the tax to be one upon the mineral lands or ore that they are in error as to their conception of the nature of the tax. We shall endeavor to dispose of their contentions in the form in which they are presented, taking up first the Commerce question and then the question of equality under the Fourteenth Amendment and uniformity under the State Constitution. It will be sufficiently apparent that some of appellants' arguments are without foundation if the law imposes an occupation tax and not a property tax.

I.

Mining Ore in Minnesota Is Not Interstate Commerce.

Mining is not interstate commerce.

Del., Lack. & West. R. R. v. Yurkonis, 238 U. S. 439;

Hammer v. Dagenhart, 247 U. S. 251;

Crescent Cotton Oil Co. v. Mississippi, 257 U. S. 129;

United Mine Workers of America v. Coronado Coal Co., 66 L. Ed. 643.

Cases involving manufacturing are cited upon this, and upon other like propositions to be discussed in this brief, because they are indistinguishable: "The very process of mining is, in a sense, equivalent in its results to a manufacturing process."

Stratton's Independence v. Howbert, 231 U. S. 399, 415;

Del., Lack & West. R. R. v. Yurkonis (supra), 238 U. S. 439, 444.

But appellants insist that mining iron ore in Minnesota differs from mining or manufacturing elsewhere and is interstate commerce because of three considerations.

1. They say that it is interstate commerce because the ore is taken from the mines or pits in the performance of contracts of sale previously made

by the mining companies to deliver it to buyers outside of the State of Minnesota.

2. Because, after the overburden of non-mineral matter has been removed, and the ore lies exposed as if upon the surface of the earth, the extraction of it is merely an act of loading upon the cars and is a part of the transportation of it.

3. They say that mining in Minnesota differs from mining and manufacturing elsewhere in that 98 per cent. of all ore mined is mined for sale and is usually and necessarily sold in states other than Minnesota, and that the ore mined in Minnesota constitutes upwards of two-thirds of all the iron ore produced in the United States.

1. *Mining ore in Minnesota is not interstate commerce because the output is sold in advance of mining.*

The first ground for distinguishing mining in Minnesota from mining and manufacturing elsewhere is readily disposed of in the language of this Court in Browning v. City of Waycross, 233 U. S. 16, an occupation tax case, holding that the work of erecting lightning rods did not become interstate commerce because the vendor of the lightning rods, in another state, had agreed to erect them at the place of installation. This Court, at page 23, said:

"It is true, that it was shown that the contract under which the rods were shipped

bound the seller, at his own expense, to attach the rods to the houses of the persons who ordered rods, but it was not within the power of the parties by the form of their contract to convert what was exclusively a local business, subject to state control, into an interstate commerce business protected by the commerce clause. It is manifest that if the right here asserted were recognized or the power to accomplish by contract what is here claimed, were to be upheld, all lines of demarkation between National and State authority would become obliterated, since it would necessarily follow that every kind or form of material shipped from one State to the other and intended to be used after delivery in the construction of buildings or in the making of improvements in any form would or could be made interstate commerce."

See also Cornell v. Coyne, 192 U. S. 418, 419.

York Mfg. Co. v. Colley, 247 U. S. 21, relied upon by appellants in determining that the contract of sale of a Pennsylvania corporation which included an agreement to install a complicated machine did not bring the company within the jurisdiction of the state in which the machine was erected, does not go so far as to hold that Pennsylvania was also deprived of jurisdiction over the company for the purposes of taxation or regulation, nor does it hold that the company's business of manufacturing such machines was interstate commerce. This Court merely held that an agreement to sell, which was within the protection of the Commerce Clause,

might include what was relevant and appropriate to the contract. This case deals with the question of when an interstate sale is completed not when it is begun. Mining or manufacturing is a local business and this case, as do the others of the series referred to in the opinion, declares that a local business, separate and distinct from interstate commerce, cannot be made interstate commerce, by the contract under which the commodity, locally produced, may be sold.

2. *Mining in Minnesota is not merely the act of loading ore on cars, and the tax is not levied on the ore after transportation has begun.*

The second proposition is not true in any sense as applied to underground mining. As applied to open pit mining it overlooks the huge operation of stripping the overburden of non-mineral earth from the ore body, which takes the place of sinking of shafts and the driving of tunnels in underground mining, of which it is the equivalent. And it overlooks the fact that the driving of steam shovels into the ore body thus exposed and the swinging of the loaded shovels to the cars which are brought into the pits by the mining companies at their own cost, takes the place of drilling, dynamiting, shoveling, hauling through drifts to the hoist and hoisting, in underground mines, of which it is the equivalent. In this contention some of the appellants simply deny that they are in the business of min-

ing, whereas it is perfectly clear that they have chosen one of the two different methods of mining, which are usually employed by those who dig iron ore from its natural bed beneath the surface of the earth. Mining companies cannot go into the iron districts of Minnesota and begin loading iron ore into cars. Ore does not lie on the surface of the earth. Operators can either, through shafts and tunnels, dig it from the depths at which it lies, or they can dig away the overburden of earth and then get at the ore. In either case they engage in the business of mining and not merely that of loading ore on cars. Clearly, as to interstate commerce, there is no difference between open pit mining and underground mining.

Appellants in support of this contention rely greatly on Eureka Pipe Line Company v. Hallanan, 257 U. S. 265, in which the Court had before it a West Virginia statute which forbade engaging in the business of transporting petroleum in pipe lines without the payment of a tax for each barrel of oil transported. At page 272 it was said: "* * * the transmission of this stream of oil was interstate commerce from the beginning of the flow." We think appellants misunderstand the Court's meaning. It was not the thought of the Court that this interstate stream began before the oil was received into the pipe line. The Court did not mean that the interstate flow began in the sands from which the oil was pumped. The oil moved in interstate commerce only from the time it left the wells. The receipt of the oil, at the sur-

face outlet of the wells into the pipe lines, marked the beginning of interstate transportation, just as the receipt of iron ore by the carriers upon their cars and upon their tracks, for shipment out of the state, marks the beginning of interstate transportation of iron ore mined in Minnesota. Nor does Heyman v. Hays, 236 U. S. 178, cited by appellants, support their contention on this point. The ruling was that no privilege tax might be imposed on the business of selling whiskey, held in Tennessee, where no business was done other than that of selling the stock on hand, by mail orders, and preparing it for delivery to other states. No whiskey was manufactured. The Court did not hold that interstate transportation of it began at any time before the whiskey had been brought into existence. So here, there can be no interstate transportation of ore until after the mining process has brought merchantable iron ore into existence.

Under a separate heading, appellants offer an argument which is very much the same as the one which we are now considering. They say that the tax is "one upon the property which has started on its way in interstate commerce." In effect they say that their business is merely loading iron ore on cars and that nothing precedes loading. They say that mining and loading on cars are one and the same act. Or they say that there is no point in the mining of iron ore at which it is not being transported. We need not discuss this contention in detail.

There is nothing in the law which indicates an intent to tax the ore at any time either before or after transportation; the tax is on the business of mining it. But aside from this, there is no provision which indicates an intent to postpone assessment of the tax until transportation of the ore has begun. On the contrary, the tax is payable even though it never be transported. And the ore is valued at the point of production, costs of production only are subtracted therefrom. The valuation is not taken at the place of sale; it does not include any increase on account of any movement of the ore to market or elsewhere. There is but one possible point at which the tax can be said to attach. That is the point at which the ore has been mined, and before the movement of mined ore has begun. Appellants simply say that transportation is not separable from the mining process and in this they merely repeat either that they are not engaged in the business of mining or that mining is intrinsically, because of their methods, transportation. And neither of these propositions is sound in fact or in law.

3. *Mining in Minnesota is not interstate commerce because 98 per cent. of the ore is transported or sold in interstate commerce or because it constitutes more than two-thirds of all the iron ore produced in the United States.*

The third proposition put forward by appellants is that since 98 per cent. of iron ore mined is usual-

ly and because of the established course of trade necessarily shipped out of the state and because the ore so mined constitutes more than two-thirds of all such ore produced in the United States, the mining itself is interstate commerce. This is chiefly the idea upon which the case of appellants, under the commerce clause, is built. It is the thought of appellants that the decisions of this Court go so far as to forbid the imposition of any state tax upon a mining or manufacturing business if all, or nearly all, of the product of the mine or factory is destined for sale and is usually or necessarily sold in other states, provided the amount produced is sufficiently large to constitute an important part of all such products consumed in the United States.

We think that a single general observation concerning this contention will serve to show its fallacy.

Every large factory will, as a rule, in the ordinary and necessary usages of trade, sell a large part of its product in interstate commerce. And we may observe that frequently products of such factories will be contracted for in advance of manufacture. The product of nearly every large mine, whether it be a gold mine, silver mine, copper mine, coal mine, or iron mine, will usually, and in the necessary course of trade, find its way into the channels of interstate commerce. A very large part of the flow of every large oil well, will, necessarily, be sold in interstate commerce. The products of the forests of the country will necessarily find their way into interstate commerce. Nearly

all of the grain grown in western states is sold and transported in interstate commerce. All, or nearly all, of the cattle raised in the cattle-producing regions, furnishing as they do the meat consumed in the United States and abroad, are sold in interstate commerce. In a word, all, or nearly all, of the raw materials of the country, and all, or nearly all, of the manufactured goods of the country, are sold and transported in interstate commerce; and different states may be named as the producers of a very high percentage of many different raw or manufactured products. If appellants' contention be sound, there is but little mining and but little manufacturing and but little, in the way of primary production of commodities, in this country that is not interstate commerce and accordingly immune from state taxation.

We direct attention to a few of the more pertinent decisions of this Court in which it has considered whether mining or manufacturing is a step in interstate commerce simply because the product is destined for sale or transportation elsewhere than in the state of the location of the mine or factory.

In Del., Lack. & West. R. R. v. Yurkonis, 238 U. S. 439, this Court held that a coal miner who was injured while at work in a mine from which coal was destined to be used in interstate commerce was not entitled to recover under the Federal Employers' Liability Act. The Court, at page 444, said:

> "The averments of the complaint as to the manner of the receiving of the injury by plain-

tiff showed conclusively that it did not occur in interstate commerce. The mere fact that the coal might be or was intended to be used in the conduct of interstate commerce after the same was mined and transported did not make the injury one received by the plaintiff while he was engaged in interstate commerce."

In Hammer v. Dagenhart, 247 U. S. 251, this Court, in holding that the Federal Child Labor Law exceeded the power of Congress, at page 272, said:

"Commerce 'consists of intercourse and traffic * * * and includes the transportation of persons and property, as well as the purchase, sale and exchange of commodities.' The making of goods and the mining of coal are not commerce, nor does the fact that these things are to be afterwards shipped or used in interstate commerce, make their production a part thereof. Delaware, Lackawanna & Western R. R. Co. v. Yurkonis, 238 U. S. 439.

Over interstate transportation, or its incidents, the regulatory power of Congress is ample, but the production of articles, intended for interstate commerce, is a matter of local regulation.

'When the commerce begins is determined, not by the character of the commodity, nor by the intention of the owner to transfer it to another state for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation, or the actual commencement of its transfer to another state.' (Mr. Justice Jackson in In re Green, 52 Fed. Rep. 113.) This principle has been recognized often in this Court. Coe v.

> Errol, 116 U. S. 517; Bacon v. Illinois, 227 U. S. 504, and cases cited. If it were otherwise, all manufacture intended for interstate shipment would be brought under federal control to the practical exclusion of the authority of the states, a result certainly not contemplated by the framers of the Constitution when they vested in Congress the authority to regulate commerce among the states. Kidd v. Pearson, 128 U. S. 1, 21."

In Crescent Cotton Oil Co. v. Mississippi, 257 U. S. 129, this Court upheld the law of Mississippi forbidding corporations which were interested in the manufacture of cotton seed oil to own or operate cotton gins and held the law applicable to a corporation whose product was destined to be used in interstate commerce. In the opinion, at page 136, it is said:

> "The separation of the seed from the fiber of the cotton which is accomplished by the use of the cotton gin, is a short but important step in the manufacture of both the seed and the fiber into useful articles of commerce, but that manufacture is not commerce was held in Kidd v. Pearson, 128 U. S. 1, 20. 21; United States v. E. C. Knight Co., 156 U. S. 1, 12, 13; Capital City Dairy Co. v. Ohio, 183 U. S. 238, 245; McCluskey v. Marysville & Northern Ry. Co., 243 U. S. 36, 38; Hammer v. Dagenhart, 247 U. S. 251, 252 and in Arkedelphia Milling Co. v. St. Louis Southwestern Ry. Co., 249 U. S. 134, 151, 152. And the fact, of itself, that an article when in the process of manufacture is intended for export to another state does not render it an article of interstate commerce.

Coe v. Errol, 116 U. S. 517, and New York Central R. R. Co. v. Mohney, 252 U. S. 152, 155. When the ginning is completed, the operator of the gin is free to purchase the seed or not, and if it is purchased to store it in Mississippi indefinitely, or to sell or use it in that State or to ship it out of the State for use in another, and, under the cases cited, it is only in this last case and after the seed has been committed to a carrier for interstate transport that it passes from the regulatory power of the State into interstate commerce and under the national power.

The application of these conclusions of law to the manufacturing operations of the cotton gins, which we have seen precede but not a part of interstate commerce, renders it quite impossible to consider them an instrumentality of such commerce, which is burdened by the Anti-Gin Act, and the first contention of the plaintiff in error must be denied."

See also Cornell v. Coyne, 192 U. S. 418.

In the case of American Mfg. Co. v. St. Louis, 250 U. S. 459, which, of all those we have been able to discover, is the most pertinent and which we submit is decisive of this branch of the case, the Court held that a tax imposed on the business of a manufacturing company whose product was destined to be sold and was sold beyond the state imposed no unconstitutional burden upon interstate commerce. In the opinion, at pages 463 and 464, it is said:

"* * * payment of the tax is not made a condition of selling goods in interstate or in other commerce, but only of continuing the manufacture of goods in the City of St. Louis.

> There is no doubt of the power of the State, or of the city acting under authority, to impose a license tax in the nature of an excise upon the conduct of a manufacturing business in the city. Unless some particular interference with federal right be shown, the States are free to lay privilege and occupation taxes. Clark v. Titusville, 184 U. S. 329; St. Louis v. United Railways Co., 210 U. S. 266, 276.
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> In our opinion, the operation and effect of the taxing ordinance are to impose a legitimate burden upon the business of carrying on the manufacture of goods in the city; it produces no direct burden on commerce in the goods manufactured, whether domestic or interstate, and only the same kind of incidental and indirect effect as that which results from the payment of property taxes or any other and general contribution to the cost of government. Therefore, it does not amount to a regulation of interstate commerce."

The cases relied upon by appellants do not support their position on this point. It is true that in United Mine Workers of America v. Coronado Coal Co., 66 L. Ed. 643, at page 658, it was said:

> "If unlawful means had here been used by the National body to unionize mines whose product was important, actually or potentially, in affecting prices in interstate commerce, the evidence in question would clearly tend to show that that body was guilty of an actionable conspiracy under the Anti-Trust Act."

But it is perfectly clear that such evidence would have had no tendency to prove that the oper-

ation of the coal mines, which were involved in that case, was interstate commerce. The Court distinctly said that it was not. Selling and transporting the output of the mines was clearly such commerce and the unionization of mines of great output by unlawful acts could be made the means of interfering with prices and hence with selling and transporting coal in interstate commerce.

Lempke v. Farmers Grain Co., 258 U. S. 50, is another case relied upon because this Court, in its opinion, adverted to the necessary usage of selling all, or nearly all, of the grain grown in North Dakota in other states. The Court did not hold that the raising or threshing of grain in North Dakota was interstate commerce; the ruling was that a regulatory statute of the state directly interfered with the sale of grain in other states.

Stafford v. Wallace, 66 L. Ed. 469, involving the "Packers and Stockyards Act of 1921," is relied upon for somewhat similar reasons. But here, too, the Court considered the right of Congress to adopt appropriate measures to prevent conspiracies interfering with buying, selling and transporting goods among the states. The production of goods for sale or transportation was not involved.

It is worthy of note that in each of these cases the Court pointed out that decisions involving state taxation are to be distinguished from those involving conspiracies to interfere with interstate commerce and are to be distinguished from those

involving other federal or state regulatory laws. We submit that the distinction is chiefly that the regulatory acts usually deal with or affect the very structure, the arch itself, of commerce from the point in one state at which transportation begins to the point in another state where the transaction is completed. In tax cases the production of goods before their entry into interstate commerce alone is affected, and affected in such a manner as not to involve, except properly and incidentally, the interstate sale and transportation of the commodities produced.

These are the more pertinent of the cases cited by appellants and to distinguish them is to show the inapplicability of the others. In all of them the Court dealt with purchase, sale, transportation or communication among the states. There may be an interference with manufacturing or mining in such a way as to interfere with buying, selling or transporting the goods produced. But the additional element of interfering with buying and selling or transporting, or an intent or conspiracy to carry out this additional purpose, must be present in order to bring the matter within the operation of the Commerce Clause. Mining or manufacturing considered intrinsically cannot be, under these decisions, interstate commerce.

The fact merely that the products of a mine or factory, are to be sold in interstate commerce does not add the necessary element, in dealing with a question of state taxation, because the tax does not affect, within the meaning of the decisions.

the sale of the product whether the sale be made before or after manufacture. If the tax is not levied upon purchases and sales in interstate commerce, or if it is not levied directly upon the goods while being transported, or if buying, selling or transporting between states is not made dependent upon the payment of the tax, commerce is not interfered with.

In respect to taxation, at least, manufacture or mining is a thing separate and apart from sale or transportation; and taxes are commonly laid upon the business of mining and manufacturing without regard to the ultimate disposition of the product. The states are not confined to the taxation of mines and factories, the output of which is consumed within the state.

Manufacturing or mining is a process in itself. Mining is one thing. Selling or transporting the product is another. Everything that is made, generally speaking, is made to be sold. This is true of mining. And to this extent manufacturing, or mining, and selling and transporting cannot be disassociated. But they are not continuous. There is no "flow." One precedes and the other follows:

During the period of production the commodities which are being mined or made, and the business of mining or making them, are wholly within the jurisdiction of the states. The products do not come into interstate commerce until interstate transportation begins. The business itself, being purely local, always remains within the exclusive jurisdiction of the state, and the federal power

over it only applies to the sale or transportation of the product.

This separation of manufacture from the selling of the completed articles is a fixed conception in determining what is and what is not interstate commerce, as the cases show. And no contract, or practice as to the time or manner or method of selling goods which were made, or which are to be made can change the principle. Manufacturing and mining are definitely recognized activities, the intrinsic nature of which is not changeable. The process remains the same whether the commodities are sold within, or without, the state, whether they are sold before or after being made or mined. And when this Court said that mining and manufacturing is not interstate commerce it meant that mining, whatever might be the details of business management, was not interstate commerce. And when it said that mining precedes but is not a part of interstate commerce, it meant all mining, regardless of accidental circumstances compelling the sale of the product in states other than that of the location of the mine.

So that mining in Minnesota is a thing apart from the selling of the ore. It is not a mere act of preparing ore for transportation nor is it transportation itself. The tax is levied upon the business which is carried on in its entirety within the State of Minnesota. Neither transportation nor sale are directly affected. And in every case cited and relied upon by appellants, this Court indicated

that Federal jurisdiction depended upon these factors.

Mining in Minnesota is not a different activity than mining elsewhere; any more than manufacturing in Minnesota is a different activity than manufacturing elsewhere. Mining in Minnesota, as conducted by the company which gets ore by removing the overburden and which is able to sell its output before production, is not a different industry than mining in Minnesota by companies which dig their ore in underground tunnels and drifts and find a market for it afterwards. And the essential nature of the industry is not changed in either case by the irrelevant, subsequent, circumstance, whether arising as a matter of business judgment, or as a matter of usage or necessity, that the ore mined by these companies in Minnesota is sold elsewhere.

If mining in Minnesota is interstate commerce or is so closely related to it that a tax upon the business is a direct interference with commerce, mining everywhere is interstate commerce. And a very large part of the manufacturing of the country is interstate commerce, and the very wide field of regulating mining and manufacturing, in a degree approaching in some measure the regulatory control of interstate carriers, is open to Congress. But this Court has said (Hammer v. Dagenhart) that there is no such federal power. And in saying so it determined the case against appellants' contentions.

We feel, in view of the position taken by appellants, that it is unnecessary to discuss the difference between taxes which impose direct, and those which impose only indirect, burdens upon commerce, upon which principle the validity of state tax laws frequently depends. This tax will affect commerce indirectly in the same sense that every tax upon goods which are sold in interstate commerce affects such commence. We do not understand appellants to claim that the tax imposes a forbidden burden in this sense. The contention is that the imposition is one directly upon commerce, or that it attaches at a point so closely connected with transportation itself as to be an indirect burden having exactly the same direct force and effect as if the imposition were postponed to the time when transportation had begun. The assertion is that mining is so intimately connected with transportation that any tax thereon is equivalent to a tax upon transportation.

The argument holds good whether the tax be great or small, whether it has much or little incidental effect on commerce. And since no showing is made either in respect to the fairness of the tax or in respect to its necessary effect as an indirect or incidental burden, we may properly assert that the whole argument for appellants must fall if it is determined that mining, as conducted by them in Minnesota, is not intrinsically interstate commerce.

But it is argued that it was the motive and purpose of the legislature of Minnesota to levy tribute

on interstate commerce and that on this account this Court must treat the law as one imposing a tax directly upon interstate transportation and sale, although in its terms it is not such, and although in its necessary effect the burden is not direct, but only incidental and indirect. We consider this equivalent, under the circumstances of this case, to asserting that mining in Minnesota was made interstate commerce by the motive upon which the legislature adopted a law taxing that business.

The legislature of Minnesota did not adopt the Act with the motive of levying a tax upon interstate commerce.

Appellants refer to numerous bills introduced in the legislature at various sessions preceding the session of 1921, which bills provided for the taxation of iron properties, but which did not become laws, to messages of the governors of Minnesota dealing with such bills and to reports of the Minnesota Tax Commission summarizing arguments for and against different forms of the taxation of iron properties, as evidence of the purpose or motive which induced the legislature to adopt the law now under consideration. And they build upon these documents an argument that the motive of the legislature was to interfere with interstate commerce.

Objection to the introduction of all of these documents was made at the trial upon the ground that

the intention and purpose of the legislature must be ascertained from the act itself, its necessary effect, and from those matters of common knowledge of which the Court may take judicial notice. Further objection was made upon the ground that the documents were wholly irrelevant and had no tendency to prove the existence of the motive imputed to the legislature. They were received "subject to objections" (p. 36) and no final ruling was made upon their admissibility.

We submit that the motives of the legislature cannot be inquired into in this manner. The motives or reasons which induce individual members of the legislature to vote either for or against a measure are irrelevant and immaterial and the Court will not and cannot take evidence of that kind for the purpose of either overthrowing or upholding a law. Some documents and records will be examined as an aid in interpreting a law where its meaning is uncertain. But this is the limit of the rule.

Fletcher v. Peck, 6 Cranch 87, 130;
Soon Hing v. Crowley, 113 U. S. 703, 710;
Lapina v. Williams, 242 U. S. 78, 90;
Railroad Commission v. C. B. & Q. R. R. Co., 66 L. Ed. 236, 243.

Even where facts are properly before the Court which, in the opinion of some, may tend to show an improper legislative motive, this Court will not adopt such an inference, if any other is reasonably open to it.

Thus in the Ohio Tax Cases, 232 U. S. 576, this Court declined to find a wrongful intent to tax interstate commerce from the facts recited in the part of the opinion found at page 593, from which we quote:

> "The present act does not on its face manifest a purpose to interfere with interstate commerce, and we are unable to accept the historical facts alluded to as sufficient evidence of a sinister purpose, such as would justify this Court in striking down the law. *We could not do this without in effect denouncing the legislature of the state as guilty of a conscious attempt to evade the obligations of the Federal Constitution.* Assuming the law was changed in 1910 because of a fear that the Code Law would be held unconstitutional, the mere fact that, while excluding interstate earnings from the multiplicand, the multiplier was increased, is not of itself deemed sufficient evidence of an unlawful effort to burden a privilege that is not a proper subject of state taxation." (Italics ours.)

And we may add that certainly if a State Legislature adopts a tax law with the purpose or motive of levying upon interstate commerce, but fails in its purpose, the law will not come in conflict with the Commerce Clause. That is this case, if we assume the existence of the wrongful motive charged by appellants. But we assert that the evidence has no tendency to prove a legislative purpose, motive, or intent to tax interstate commerce.

These bills, documents and reports taken together show that from 1881, at which time iron ore was

not being shipped from the state (the first shipment was made in 1885, Folio 78) until 1897 there was a tonnage tax of one cent per ton on iron ore mined. In 1897, because it was believed to be unconstitutional, this law was repealed (Folio 79). In State v. Lakeside Land Co., 71 Minn. 283, it was, about the time of its repeal, held to violate the provision of the State Constitution requiring all property to be taxed uniformly and on a cash valuation basis. Thereafter the taxation of iron properties came within the operation of the ordinary ad valorem tax laws under which mines were valued by local township and village assessors and the tax was calculated at a rate fixed to meet budget requirements. In 1906 the Constitutional provision limiting the legislature to taxation upon the "cash valuation" basis was repealed and thereafter the only limitation upon its powers was found in the requirement that "taxes shall be uniform upon the same class of subjects." At the next session of the legislature and at every session thereafter bills in various forms were introduced providing for some change in the existing method of taxing mineral lands or minerals, including several bills providing for the taxation of the "rents" or "royalties" accruing to owners of mineral lands under mineral leases. No less than twenty-five such bills were introduced during this period, including those offered at the 1921 session. These bills received most careful consideration. Each bill offered differed somewhat in theory or plan, in details of the method of valuation, or in the deductions from val-

uations to be permitted, or in the rate. At six sessions of the legislature bills in various forms were defeated. At two sessions bills were passed and were vetoed.

Some of the bills considered by the legislature proposed to levy taxes on that part of the iron ore which was shipped from the state. Every such bill was beaten. Some of the bills proposed direct levies on the ore. Every such bill was beaten. The only bills which were passed were those assessing mining companies within the state upon the basis of part of their earnings. These were vetoed. The first because it operated unequally upon different companies, and the second principally because the governor thought it discriminated against mining companies as compared with those engaged in other classes of business. or industry. (Folios 78, 79, 87-95.)

We submit that this is not a record upon which to base an assertion that the legislature had the motive to lay a burden upon interstate commerce or that the approval of the governor was given with that thought in mind. Clearly, if the Minnesota legislature was influenced by such a scheme or plot, it would not have allowed the iron ore of the state to go over its boundary lines by the millions of tons for fifteen years without having found a way to assess it.

It is true that there has been debate and issue during all this time as to whether mineral properties were bearing their fair share of taxation. The fact that such bills were introduced in and have

been considered by every assembly of the legislature for fifteen years indicates the persistency of the belief that mineral properties were not being properly, or fairly, or uniformly, or adequately taxed. There has been debate about the propriety and wisdom of departing from the ad valorem system of taxation as a means of securing additional revenue from this class of property. There have been grave, practical problems connected with every proposal to change the system of taxation. For instance, it has been deemed necessary to retain the ad valorem system as the basis of tax levies for local communities in which mines are situated, but there has been doubt and hesitatiion about adopting any method proposed by which the taxes should be adequately increased while retaining this ad valorem system. The legislature has hesitated to adopt a law which would have even the appearance of double taxation, although in effect, by a combination of methods, bringing about only the payment of a single adequate tax. Measures have been devised for solving these problems which provoked discussion and dissension as to the fairness and equality of treatment accorded the mining companies.

But the legislature has had no eye for anything beyond its borders. It refused to pass any law not aimed at the solving of the local problem. It dealt with a difficult problem of local taxation. It looked only to the revenues of the state and its obligation to deal fairly with all within the state. And even in so far as those who believed that iron ore is a

state heritage were able to influence the provisions of the laws of the state, they expressed the thought that this generation of taxpayers within the state were not entitled to use all of the taxes, whether they be little or great, for present day governmental needs, but that they should be conserved against a time when property values of the state would be greatly lessened and the whole burden of taxation shifted to other forms of property by the disappearance of iron ore. No matter what else may be said of this idea, it cannot be construed into the equivalent of a plan to assess either the people of other states or commerce between the states.

The truth is that the evidence relied upon tends to indicate that the legislature was ultimately guided by the advice of the Tax Commission in its recommendation, after summarizing without approval or disapproval, various arguments which had come to its attention, that the problem of taxing mineral rights and property should be solved in this spirit:

> "The question of a tonnage tax or a tax on profits derived from mining is too important and too far-reaching in its possible consequences to be settled by either prejudice or sectionalism. Any proposal to change our present method of taxing the great mineral deposits of the state should be considered purely on its merits. It should not be a measure to enrich the state treasury, regardless of justice or its effect on any section or industry of the state. Minnesota cannot afford to jeopardize its good name by imposing an unjust and un-

fair tax on any property within its boundaries, nor can it afford to permit any property to escape its just share of the public burden." (Folio 108.)

II.

THERE IS NO DENIAL OF THE EQUAL PROTECTION OF THE LAWS UNDER THE FOURTEENTH AMENDMENT TO THE FEDERAL CONSTITUTION, AND NO LACK OF UNIFORMITY AS REQUIRED BY SECTION 1, ARTICLE 9, OF THE STATE CONSTITUTION.

Appellants concede that the Federal question is one of classification. The State question under the provision "taxes shall be uniform upon the same class of subjects" is likewise one of classification. They argue the two contentions as one and we shall do the same.

If there is any difference between the views of this Court and the views of the Supreme Court of Minnesota as stated in the opinions of the Minnesota Supreme Court, which are referred to quite fully in appellants' brief. it is that the State Court in nearly all of its decisions has stated the rule and has not, like this Court, referred frequently to the point at which the power of judicial interference with legislative classification will be exercised. In a number of cases this Court has stated when it will interfere to declare a law to be in conflict with the Fourteenth Amendment. We select and cite, for convenience, some of such decisions in which the formula has been declared in various ways.

In Citizens Telephone Co. v. Fuller, 229 U. S. 322, 329, 331, involving the validity of a Michigan law taxing telephone companies whose annual receipts exceeded $500 while exempting those whose receipts did not reach that amount the Court said:

> "It may, therefore, be said that in taxation there is a broader power of classification than in some other exercises of legislation.
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> To these cases may be added others. They illustrate the power of the legislature of the state over the subjects of taxation and the range of discrimination which may be exercised in classifying those subjects *when not obviously exercised in a spirit of prejudice and favoritism.* Cook v. Marshall County, 196 U. S. 261, 274; Missouri v. Dockery, 191 U. S. 165. The cases decided subsequent to the decision in Bell's Gap Railroad Co. v. Pennsylvania, have applied its principle to many varying instances. *Granting the power of classification, we must grant government the right to select the differences upon which the classification shall be based, and they need not be great or conspicuous.* Keeney v. New York, 222 U. S. 525, 536. The state is not bound by any rigid equality. *This is the rule: its limitation is that it must not be exercised in 'clear and hostile discriminations between particular persons and classes.* See 223 U. S. 59, 62, 63. Thus defined and thus limited, it is a vital principle, *giving to the government freedom to meet its exigencies, not binding its action by rigid formulas but apportioning its burdens and permitting it to make those 'discriminations which the best interests of society require.'"* (Italics ours).

In District of Columbia v. Brooke, 214 U. S. 138, involving an act of Congress providing for drainage taxes alleged to discriminate between resident and non-resident property owners the principle was expressed at page 150 in the following language:

> "However, the question of the power of Congress, broadly considered, to discriminate in its legislation is not necessary to decide, for whether such power is expressly or impliedly prohibited, the prohibition cannot be stricter or more extensive than the 14th Amendment is upon the states. That amendment is unqualified in its declaration that a state shall not 'deny to any person within its jurisdiction the equal protection of the laws.' Passing on that amendment, we have repeatedly decided—so often that a citation of the cases is unnecessary—that it does not take from the states the power of classification. *And also that such classification need not be either logically appropriate or scientifically accurate.* The problems which are met in the government of human beings are different from those involved in the examination of the objects of the physical world and assigning them to their proper associates. *A wide range of discretion, therefore, is necessary in legislation to make it practical, and we have often said that the courts cannot be made a refuge from ill-advised, unjust or oppressive laws.* Billings v. Illinois, 188 U. S. 97; Heath & Milligan Manufacturing Co. et al. v. Worst, 207 U. S. 338." (Italics ours).

In Rast v. Van Deman & Lewis, 240 U. S. 342, involving the validity of tax upon persons using trading stamps in addition to other license tax provided for, the Court expressed at page 357 the rule governing the right of classification as follows:

> *"It is established that a distinction in legislation is not arbitrary, if any state of facts reasonably can be conceived that would sustain it, and the existence of that state of facts at the time the law was enacted must be assumed."* (Italics ours).

And another phase of the principle is emphasized in the statement of the rule in Middleton v. Texas Power & Light Co., 249 U. S. 153, involving the validity of workmen's compensation act which excluded many classes of employes. The Court's statement at page 157 is as follows:

> "There is a strong presumption that a legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience, and that its discriminations are based upon adequate grounds. The equal protection clause does not require that state laws shall cover the entire field of proper legislation in a single enactment. If one entertained the view that the act might as well have been extended to other classes of employment, this would not amount to a constitutional objection. Rosenthal v. New York, 226 U. S. 260, 271; Patsone v. Pennsylvania, 232 U. S. 138, 144; Missouri, Kansas & Texas Ry. Co. v. Cade, 233 U. S. 642, 649-650; International Harvester Co. v. Missouri, 234 U. S. 199, 215; Keokee Coke Co. v.

Taylor, 234 U. S. 224, 227; Miller v. Wilson, 236 U. S. 373, 384.

The burden being upon him who attacks a law for unconstitutionality, the courts need not be ingenious in searching for grounds of distinction to sustain a classification that may be subjected to criticism. But in this case adequate grounds are easily discerned."

To the foregoing cases may be added other citations of a pertinent nature in which this Court applied these rules in cases involving state taxation:

The Delaware Railroad Tax, 18 Wall. 206, 231;

Pacific Express Company v. Seibert, 142 U. S. 339, 350.

Florida Central &c. v. Reynolds, 183 U. S. 471, 476;

Coulter v. Louisville & Nashville R. R. Co., 196 U. S. 599; 608;

Armour Packing Co. v. Lacy, 200 U. S. 226, 235;

Michigan Central Railroad v. Powers, 201 U. S. 245, 301;

Ohio Tax Cases, 232 U. S. 576, 590;

Singer Sewing Machine Co. v. Brickell, 233 U. S. 304, 315;

St. Louis S. W. Ry. v. Arkansas, 235 U. S. 350, 367;

Armour & Co. v. Virginia, 246 U. S. 1;

Northwestern Life Ins. Co. v. Wisconsin, 247 U. S. 132, 138.

And the Supreme Court of Minnesota has quoted from these cases and has adopted the principles announced in them in determining questions of classification arising under the State Constitution.

State ex rel St. Paul City Ry. Co. v. Minnesota Tax Com., 128 Minn. 384, 385, 386;

State v. Wells-Fargo & Co., 146 Minn. 444, 455, 456.

On the other hand this Court, in determining a purely state question, the validity of a state tax law under the State Constitution, applied the rule of classification as it is declared to be in enforcing the Fourteenth Amendment.

Bowman v. Continental Oil Co., 256 U. S. 642.

But there is this very important difference in respect to the State and Federal question, which under the circumstances here present, almost confines the argument to classification under the Fourteenth Amendment. This Court will not declare a state law to be in violation of a State Constitution in advance of a decision of the State Court unless it is "imperatively" necessary that it do so.

In Pullman Co. v. Knott, 235 U. S. 23, 27, the Court said in declining to overturn a tax law of the state of Florida:

> "These considerations undoubtedly are very strong. But as we are dealing with the validity of the law under the state constitution, a

matter that must be decided finally by the state court, and as the state court has held other gross earnings taxes to be license taxes, Afro-American Industrial Benefit Ass'n. v. Florida, 61 Florida, 85, 89, we are of opinion that if this act is to be overthrown it should not be overthrown by us."

In Louis & Nash R. R. Co. v. Garrett, 231 U. S. 298, 305, the Court in refusing to interfere with a state statute affecting railroad rates, said:

"So far as we are advised, the court of appeals of Kentucky has not passed upon the validity of the act in question; and this court has often expressed its reluctance to adjudge a state statute to be in conflict with the constitution of the state before that question has been considered by the state tribunals—to which it properly belongs—unless the case imperatively demands such a decision. Pelton v. National Bank, 101 U. S. 143, 144; Michigan Central R. R. Co. v. Powers, 201 U. S. 245, 291. Here, the argument against the statute is not of that compelling character."

In Coulter v. Louisville & Nashville R. R. Co., 196 U. S. 599, the Court at page 609 said in reference to this same matter:

"If that ground fails, and obviously fails (the attack on federal grounds) the Court should be very cautious, at least, in interfering with the state's administration of its taxes upon other considerations which would not have given it jurisdiction."

And in Pelton v. National Bank, 101 U. S. 143, 144, in discussing the indisposition of the Court to hold a state law in violation of the State Constitution, the Court said:

> "* * * It would be indelicate to make such a decision in advance of the State courts, unless the case imperatively demanded it."

And finally in Michigan Central Railroad Co. v. Powers, 201 U. S. 245, 291, it is said:

> "Especially is this true when the statute is one affecting the revenues of the state, and therefore of general public interest."

We proceed to consider the particulars of inequality and lack of uniformity upon which appellants rely, in the light of these principles.

A.

The State may tax the business of mining without imposing a like tax on any other business.

The point is made, but only incidentally, and it is not strongly urged, that the law is invalid because it selects the business of mining as the subject of an occupation tax and does not impose a like occupation tax, or any occupation tax, upon any other kind or class of business within the state. The state may impose a tax upon any business or occupation. State v. Parr, 109 Minn. 147, 152. It has that inherent power. State v. Wells-Fargo & Co., 146 Minn. 444, 454. It need not impose such a tax upon any occupation. Given this right, it

must follow that the choice of occupation to be taxed rests with the legislature, and its choice need not depend upon any other circumstance than the one that the occupation is one of a distinct and recognized class. The right of the state to select a particular business or occupation as a classified subject of taxation is settled, in this Court, by Southwestern Oil Co. v. Texas, 217 U. S. 114, which we cite as controlling. In this case this Court upheld a law imposing an occupation tax upon wholesale dealers in petroleum products, where the tax was fifty to one hundred times greater than any tax upon any other wholesale dealer. The Court, at page 125 said:

> "But we will not speculate as to the motives of the state, and will assume—the statute, either upon its face or by its necessary operation, not suggesting a contrary assumption—that the State has in good faith sought, by its legislation, to protect or promote the interests of its people. It is sufficient for the disposition of this case to say that, except as restrained by its own constitution or by the Constitution of the United States, the State of Texas, by its Legislature, has full power to prescribe any system of taxation which, in its judgment, is best or necessary for its people and government; that, so far as the power of the United States is concerned, the State has the right, by any rule it deems proper, to classify persons or businesses for the purposes of taxation, subject to the condition that such classification shall not be in violation of the Constitution of the United States; that the requirement by

the State, that all wholesale dealers in specified articles shall pay a tax of a given amount on their occupation, without exacting a similar tax on the occupations of wholesale dealers in other articles, cannot, on the face of the statute or by reason of any facts within the judicial knowledge of the court, be held, within the meaning of the 14th amendment, to deprive the taxpayer of his property without due process of law or to deny him the equal protection of the laws; and that the Federal court cannot interfere with the enforcement of the statute simply because it may disapprove its terms, or question the wisdom of its enactment, or because it cannot be sure as to the precise reasons inducing the State to enact it."

To the same effect are:

Singer Sewing Machine Co. v. Brickell, 233 U. S. 304, 315;

Bowman v. Continental Oil Co., 256 U. S. 642.

B.

All who are engaged in the business of mining are included in the operation of the law.

Appellants next assert that the law lacks uniformity and equality because all those engaged in the business of mining are not brought under its operation.

Those who are not taxed, they say, are persons engaged in stripping mines under contract with the lessees, those who enter into contracts with the lessees to furnish and operate steam shovels in

open pit mines, and laborers in underground mines who, like the steam shovel contractors, are not paid a daily wage, but agree in groups, usually of four, with the operators of the mines to take out ore at a fixed price per ton. We agree that none of these persons are within the terms of the act; the act applies to persons who engage in the business of mining, as principals, and it does not apply to every laborer in a mine nor every person who furnishes machinery, supplies or services for a mine, or to be used in a mine. It is sufficient to say that such persons are not engaged in the business of mining.

Armour Packing Co. v. Lacy, 200 U. S. 226, 236.

Next they say that mining companies, in a given year or during a series of years, may do an extensive mining business, such as stripping, shaft sinking, and the like, without actually detaching or producing any ore, and that these mining companies do not come within the provisions of the act. But these mining companies, we insist, are engaged in the business of mining and are within the act. The circumstance that they fail to produce ore upon which the obligation to pay the tax depends may make their situation similar to that of those companies who mine ore at a loss, but that does not show the law does not operate upon all miners alike, according to the measure of their success in carrying on their business. Furthermore, neither such miners, nor others, may complain of

a provision which operates, upon all alike, to postpone the payment of the tax until the proceeds of the successful conduct of their business may be realized.

American Mfg. Co. v. St. Louis, 250 U. S. 459, 463.

C.

The law operates uniformly upon all those who are engaged in the business of mining.

The law is said to lack uniformity in operation because the legislature has directed the tax to be based upon the value of the ore less the direct costs of mining it, thus approximating the net value of the ore. The legislative theory is that an occupation tax should be measured by the value of the right or privilege engaged in under the state's protection and that the amount of the tax should vary with the profitableness or unprofitableness of the business. It was thought unfair to tax the mining companies alike on each ton of ore produced when it was well known, as the facts stipulated show, that the costs of producing ore varied greatly with the different companies. It is, of course, true that as a matter of law the legislature was not obliged to show this fairness. It might have ignored differences in the circumstances, situation and surroundings of the different companies, and might have measured the tax by the gross value of the output, upon the assumption that no inequality

would result therefrom. Or it might have exacted a fixed amount for each ton of ore mined, upon the same assumption and such a law would not lack uniformity as a matter of law. But it was not confined to these courses. It could aim at actual uniformity and strive for fairness by equalizing the tax according to the ability of those upon whom it was imposed to bear it. It could deduct from the value of the output the cost of production. If the rule were otherwise no income tax could ever be uniform. If, on the other hand, all costs of doing business must be deducted, no law which is not the exact equivalent of an income tax, could ever be uniform. It must be at once apparent that usually, if not always, a law which permits deductions from the gross valuation of a manufactured article or the product of a mine, and bases the tax upon the balance of value, will be fairer and more uniform than one which does not. And when appellants say this law lacks uniformity because some of them are allowed greater deductions than others, they merely say that it would be equally lacking in uniformity if such deductions were allowed to no one, the difference being that in the first case the burden is cast upon those who profit most in carrying on their business, whereas in the second case the burden is placed upon those who profit least or not at all. There is no such thing as uniformity as it is conceived by appellants.

We need not argue that since the legislature undertook to allow deductions from the valuations upon which the tax was to be based, it was obliged

to allow every conceivable deduction. It is not necessary to assert that the legislature, having aimed at and achieved a greater degree of fairness and uniformity than the Constitution requires, violated the Constitution in failing to arrive at absolute, at the perfection of, fairness. Of course, if these deductions were so manipulated that, in the failure to allow particular costs or expenses, mining companies were less fairly or uniformly treated than if no deduction at all were allowed, there might be just cause for complaint. But no such claim is made.

One specification is that the companies are allowed to deduct the actual direct costs of mining and that these costs will be greater with some companies than with others and the company which operates at a greater cost is "favored" by having the lesser surplus and hence paying a smaller tax on account of each ton of ore mined. We answer that the law would be no less uniform, and would be admittedly valid, if there were no deductions and if the companies operating on the lower cost were favored by being required to pay only the same taxes as those which operated with lesser profit or no profit at all.

A refinement is made of another provision in which, in its effort to equalize the tax, the legislature permitted the cost of opening and developing mines to be ascertained and deducted by apportionment of this initial cost to the annual output. It is said that in rare instances the entire ore body on a given leasehold may not be removed during

the term of the lease and hence the mining company may not work out the full allowance of this deduction. Even if this were true, it would not invalidate the law. A law which adopts a fair general plan will not be declared unconstitutional because in a remote contingency the effort to obtain equality may not be fully attained as to a member of the class affected. (Ohio Tax Cases, 232 U. S. 576; Metropolitan Theatre Co. v. Chicago, 228 U. S. 61.) Again we say that the law would be less fair and less uniform, but valid, if this deduction had not been allowed.

A further specific objection is that no provision is made for the deduction of interest. They say that some of the companies may have incurred obligations to pay interest on money borrowed in the development of their property. And they say that if the capital of the company was employed for that purpose, a deduction of interest on the capital so invested, as if interest had been paid as an annual outlay, should be allowed. But since no deduction for interest or interest charges is allowed to any company, all are treated alike. If one company has a larger interest liability or interest charge than another, it is because such company is engaged in mining on a larger scale than the other, and each is affected in proportion to the extent that he is engaged in the business of mining, and that is as it should be.

The next attack is on the provision permitting companies to deduct, as a cost of operation, ad

valorem taxes paid during the year on account of ore mined during the year, determined by apportioning the whole tax according to the proportion of the annual output to the expected life of the mine. This does not differ from other costs of operation and does not deprive the law of uniformity because mines in some localities pay ad valorem taxes at higher rates than do those situated elsewhere, which is the point relied on. If ad valorem taxes assessed at various rates in different localities do not on that account lack uniformity, certainly allowing deductions on account of paying such taxes does not make this law unequal in its operation.

Finally, we consider the objection which is chiefly relied upon as destructive of uniformity in the operation of the act. Appellants assert in many forms of statement that this law must fall because the mining companies are allowed to deduct from the valuation of their annual output the rents which they pay for the privilege of mining the lands upon which they carry on their business. They declare that the law discriminates between those who own or acquire mineral lands, and mine them, and those who lease lands for that purpose. The argument is that owners who lease their lands to others pay no taxes under the act, and lessees pay taxes reduced by the deduction of the sums paid to the owner. They say that owners are thus penalized for not letting their property and operators are penalized for not paying high rentals. If owners of mineral lands were taxed on rentals at

the same rates as those engaged in the business of mining, they imply, the objections which they offer would not be available. Or if owners who engage in mining their own property were allowed a deduction equivalent to the rental value of their property (an impractical proposition because of the difficulty of determining actual value) the objection would be removed. This argument means that a business or occupation may not be taxed unless persons who let property to be used in the business or occupation are taxed at the same rate on the rentals received by them. Or it means that one who is assessed on account of a business or occupation cannot be taxed, in that business, on account of the property which he uses in it, unless he would have been similarly taxed thereon if he did not use such property in the business. Of course these propositions deny the very fundamentals of excise or occupation taxes. An occupation tax may be measured by the value of property employed in the business to be taxed or it may be measured by the proceeds or earnings of the business to be taxed. Property may be affected by taxes imposed according to one form of taxation or another, accordingly as it may or may not be used in a particular kind of business, and the form of taxation under which individuals may be assessed will vary according to whether they engage in the business or not.

Furthermore, there is no more significant difference between the owner who is allowed no deduction on account of rentals not expended and the

operator who pays a small royalty, than there is between the operator who pays a small royalty and the operator who pays a large one. This deduction is not different in principle than the other deductions which we have discussed. And the facts emphasize the principle since, as we have already pointed out, mines in Minnesota are not usually operated by their owners. In 1921 all mines were operated under leases, and usually only six mines are operated by the owners of the fee. This simply means that some mining companies are at a greater rental expense than others in getting out their ore, and this expense varies directly with annual production, since rentals are paid on the basis of ore mined. And we can say of this deduction of royalties, as of other deductions, that the tax would be no more uniform if the deductions were not allowed and would be less fair, particularly in view of the prevalence of the practice of mining leaseholds.

Deductions of similar royalties in a somewhat similar law. and the failure to tax the land owner on his receipts were considered as to their constitutional effect upon the uniform operation of the law, and decided adversely to appellants' contentions in:

Standard Oil Co. v. Police Jury, 140 La. 42;
State v. Stiles, 137 La. 542.

In Metropolitan Street Ry. Co. v. New York, 199 U. S. 1, 3, 46, this Court held that a tax law of the state of New York, which allowed certain deduc-

tions from special franchise taxes, was not in violation of the Fourteenth Amendment because some such companies had paid "lump sums" for their franchises, and therefore had no deductions on account of annual payments.

One more assertion of appellants we answer because the answer tends to characterize their whole argument on uniformity. They say that allowing deductions for royalties or rents is equivalent to classifying mining companies according to the royalties which they pay. They might have gone a step further and said that allowing deductions of expenses of operation is equivalent to classifying the companies according to such expenses. The answer is that it would be just as accurate to maintain that persons assessed upon an ad valorem basis are classified according to the value of the property which they own, and that all ad valorem taxes lack uniformity because one person may own property of greater value than another or because one person pays more taxes than another.

Uniformity in taxation, in so far as it is involved in these contentions, means taxation by a uniform rule. And if the rule adopted is not "palpably arbitrary" the Constitution is not violated. The rule of permitting deductions is not in itself attacked. the contention is merely that different mining companies will be at different expense in getting out their ore. It is admitted that all mining companies operate along generally similar lines (except that they fall into two general classes and no lack of

uniformity is charged to arise on this account). A rule which allows all to deduct their actual expenditures is uniform and not palpably arbitrary. The difference in the degree of the burden of the tax arises merely out of the different circumstances of the companies and is dependent upon their different advantages and is not determined by the law.

Metropolitan Theatre Co. v. Chicago, 228 U. S. 61 (supra).

III.

THE LAW IS NOT INVALID IF IT BE CONSTRUED AS ONE IMPOSING A PROPERTY TAX RATHER THAN AN EXCISE OR OCCUPATION TAX.

We have already shown why we think the law imposes an excise or occupation tax, and in that position we have the utmost confidence. But we are wholly unable to see wherein the law would be invalid under either the Federal or State Constitutions if appellants' theory were correct, unless it should be held that the tax attaches directly to the ore after it has begun to move in interstate transportation. But their assertion is not confined to such an interpretation. They do not say why, specifically, except on that ground, a property tax in the form here imposed is forbidden.

In State v. Wells, Fargo & Co., 146 Minn. 444, a statute imposing a tax upon express companies equal to 8 per cent. of their gross earnings after

deducting all sums paid to railway companies for express privileges, in lieu of all other taxes, and hence a property tax, was sustained although attacked as in violation of the State Constitution, the Commerce Clause and the Fourteenth Amendment. As to the application of the Commerce Clause the Minnesota Supreme Court in this case followed United States Express Co. v. Minn., 223 U. S. 335, involving a similar law. We submit that appellants' attack, on this point, is wholly without foundation.

This case, under the Commerce Clause, the Fourteenth Amendment, and the State Constitution, may be summed up in a paragraph. Minnesota has taxed in a manner not shown to be excessive the purely local business of mining which is carried on extensively within its borders. Its clear right to do so is not to be taken away because the ore mined is sought and used by the people of other states. That is a circumstance not produced by the law. At most, there may be difference of opinion as to the necessity or propriety of the tax and there may be difference of opinion as to the wisdom or justice of the detailed methods of assessing the tax. These are matters of state legislative policy and we submit that this Court will not set aside the law, nor will the Supreme Court of Minnesota set aside the law, even though it should think that the legislature acted upon wrong motives, or was wrong in its judgment, the law itself being one entirely within the discretion and power of the legis-

lature to enact. The decree of the District Court should be affirmed.

Respectfully submitted,

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PATRICK J. RYAN,
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OLIVER IRON MINING COMPANY *v.* LORD ET AL.

CLEVELAND-CLIFFS IRON COMPANY *v.* LORD ET AL.

MESABA-CLIFFS IRON MINING COMPANY *v.* LORD ET AL.

BENNETT MINING COMPANY ET AL. *v.* LORD ET AL.

REPUBLIC IRON & STEEL COMPANY ET AL. *v.* LORD ET AL.

BIWABIK MINING COMPANY ET AL. *v.* LORD ET AL.

INTER-STATE IRON COMPANY *v.* LORD ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

Nos. 560–566. Argued December 6, 7, 1922.—Decided May 7, 1923.

1. The tax imposed by Laws of Minnesota, 1921, c. 223, on the business of mining iron ore, measured by a percentage of the value of the ore mined or produced, is an occupation tax. P. 176.
2. The mining of ore, even when substantially all of the ore mined is immediately and continuously loaded on cars and shipped into other States to satisfy existing contracts,—is not interstate commerce and is subject to local taxation. P. 177.
3. The facts that the Minnesota tax, *supra*, applies only to those engaged, as owners or lessees, in mining or producing ores on their own account, and not to those who do mining work for them

under contract and whose pay is part of the expenses of the business, and that it does not apply to owners or lessees who do development work but remove no ore,—do not bring it in conflict with the equal protection clause of the Fourteenth Amendment, or with § 1 of Art. 9 of the Minnesota Constitution, providing that taxes shall be uniform upon the same class of subjects. P. 179.

4. The question whether a provision of this Minnesota law allowing the amount of royalties paid on the ore mined and produced during the year to be deducted from the value of such ore before computing the tax, introduces an unconstitutional discrimination in favor of those who operate under leases and pay royalties and against owners who operate their own mines and pay no royalties, cannot be raised in this case, it appearing that all of the iron mines in the State are operated under such leases, except six which were not operated during the tax year in question and are not threatened with a tax for that or later years. P. 180.
5. A tax based on the value of ore mined and produced, after deducting royalties and major expenses of the business, cannot be adjudged arbitrary or unreasonably discriminatory merely because of lack of uniformity in royalties and expenses producing corresponding differences in the tax. P. 181.

Affirmed.

APPEALS from decrees of the District Court dismissing, on their merits, as many suits, brought by the appellants to enjoin the enforcement of a state tax law.

Mr. Cordenio A. Severance, with whom *Mr. George W. Morgan* and *Mr. Frank D. Adams* were on the brief, for appellant in No. 560.

Mr. Henry J. Grannis, with whom *Mr. William P. Belden* was on the brief, for appellants in Nos. 561 and 562.

Mr. Oscar Mitchell, with whom *Mr. William D. Bailey* and *Mr. Albert C. Gillette* were on the brief, for appellants in Nos. 563 and 564.

Mr. Edgar W. MacPherran, for appellants in Nos. 565 and 566, submitted.

Mr. Egbert S. Oakley and *Mr. Patrick J. Ryan*, with whom *Mr. Clifford L. Hilton*, Attorney General of the State of Minnesota, and *Mr. Montreville J. Brown* were on the brief, for appellees.

MR. JUSTICE VAN DEVANTER delivered the opinion of the Court.

These are suits to restrain and prevent the enforcement of a taxing act adopted by the State of Minnesota, April 11, 1921, c. 223, Laws 1921. The principal sections of the act are copied in the margin [1] and may be summarized as follows: The first subjects all who are "engaged in the business of mining or producing iron ore or other

[1] "Section 1. Every person engaged in the business of mining or producing iron ore or other ores in this state shall pay to the state of Minnesota an occupation tax equal to 6 per cent of the valuation of all ores mined or produced, which said tax shall be in addition to all other taxes provided for by law, said tax to be due and payable from such person on May 1 of the year next succeeding the calendar year covered by the report thereupon to be filed as hereinafter provided.

"Sec. 2. The valuation of iron or other ores for the purposes of determining the amount of tax to be paid under the provisions of Section 1 of this act shall be ascertained by subtracting from the value of such ore at the place where the same is brought to the surface of the earth, such value to be determined by the Minnesota tax commission:

"1. The reasonable cost of separating the ore from the ore body, including the cost of hoisting, elevating, or conveying the same to the surface of the earth.

"2. If the ore is taken from an open pit mine, an amount for each ton of ore mined or produced during the year equal to the cost of removing the overburden, divided by the number of tons of ore uncovered, the number of tons of ore uncovered in each such case to be determined by the Minnesota Tax Commission.

"3. If the ore is taken from an underground mine, an amount for each ton of ore mined or produced during the year equal to the cost of sinking and constructing shafts and running drifts, divided by the number of tons of ore that can be advantageously taken out through such shafts and drifts, the number of tons of ore that can be advan-

ores" within the State to the payment in each year of "an occupation tax" equal to 6 per cent. of the value of the ore mined or produced during the preceding year,—such tax to be "in addition to all other taxes." The second directs that the tax be computed on the value of the ore at the place where it is "brought to the surface of the earth" less certain deductions to be noticed presently. The third requires all who are engaged in such business to make on or before the first of February in each year a true report under oath of relevant information respecting their mining operations during the preceding year. And the sixth provides that where such a report is not made the State Tax Commission shall determine, from such information as it may possess or obtain, the amount and

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tageously taken out in each such case to be determined by the Minnesota Tax Commission.

"4. The amount of royalties paid on the ore mined or produced during the year.

"5. A percentage of the ad valorem taxes levied for said year against the realty in which the ore is deposited equal to the percentage that the tons mined or produced during such year bears to the total tonnage in the mine.

"6. The amount or amounts of all the foregoing subtractions shall be ascertained and determined by the Minnesota Tax Commission.

"Sec. 3. Every person engaged in such mining or production of ores shall, on or before the first day of February, 1922, and annually thereafter on or before the first day of February of each year, file with said commission under oath a correct report in such form and containing such information as the tax commission may require, covering the preceding calendar year."

"Sec. 6. If any person, subject to this act, shall fail to make the report provided for in section 3 hereof at the time and in the manner therein provided, the tax commission shall in such case, upon such information as it may possess or obtain, ascertain the kind and amount of ore mined or produced, together with the valuation thereof, and shall thereon find and determine the amount of the tax due from such person, and there shall be added thereto a penalty for failure to report, which penalty shall equal ten per cent of the tax imposed and shall be treated as a part thereof."

value of the ore and shall compute the tax and include therein a penalty of 10 per cent. for the failure to make the report.

The plaintiffs are corporations engaged in the business of mining or producing iron ore from mines within the State, and the defendants are the officers designated to carry the act into effect.

Preparatory to assessing the tax in 1922 the defendants requested the plaintiffs to make the prescribed reports of their mining operations during 1921, which the plaintiffs refused to do because they conceived that the act was invalid. The defendants then proceeded to take the requisite steps for imposing the tax, and the plaintiffs brought these suits to restrain and prevent such action on the grounds that the act and the tax about to be imposed were in conflict with the commerce clause of the Constitution of the United States, with the equal protection clause of the Fourteenth Amendment and with a clause in § 1 of article 9 of the state constitution providing "Taxes shall be uniform upon the same class of subjects."

The cases were heard together on an agreed statement of facts and some supplemental evidence which was free from conflict. One of the matters stipulated was that the suits were brought in circumstances making them cognizable in equity. The District Court sustained the act and the tax and dismissed the suits on the merits. The cases are here on direct appeals by the plaintiffs under § 238 of the Judicial Code.

The parties differ about the nature of the tax, the plaintiffs insisting it is a property tax and the defendants that it is an occupation tax. Both treat the question as affecting the solution of other contentions. There has been no ruling on the point by the Supreme Court of the State. We think the tax in its essence is what the act calls it—an occupation tax. It is not laid on the land containing the ore, nor on the ore after removal, but on

the business of mining the ore, which consists in severing it from its natural bed and bringing it to the surface where it can become an article of commerce and be utilized in the industrial arts. Mining is a well recognized business wherein capital and labor are extensively employed. This is particularly true in Minnesota. Obviously a tax laid on those who are engaged in that business, and laid on them solely because they are so engaged, as is the case here, is an occupation tax. It does not differ materially from a tax on those who engage in manufacturing. *Stratton's Independence* v. *Howbert*, 231 U. S. 399, 414; *Stanton* v. *Baltic Mining Co.*, 240 U. S. 103, 114. The plaintiffs regard *Dawson* v. *Kentucky Distilleries & Warehouse Co.*, 255 U. S. 288, as making the other way. But that case is not in point. The tax there considered, as the opinion shows (pp. 292–294), was not laid on any business, but on the mere exertion by an owner of distilled spirits of his right to withdraw them from a bonded warehouse, and had "none of the ordinary incidents of an occupation tax."

We shall therefore treat the tax as an occupation tax in dealing with the contentions presented.

The chief contention is that mining as conducted by the plaintiffs, if not actually a part of interstate commerce, is so closely connected therewith that to tax it is to burden or interfere with such commerce, which a State cannot do consistently with the commerce clause of the Constitution of the United States.

The facts on which the contention rests are as follows: The demand or market within the State for iron ore covers only a negligible percentage of what is mined by the plaintiffs.[1] Practically all of their output is mined to fill existing contracts with consumers outside the State

[1] In 1921, out of a total output of 18,167,370 tons the amount sold and used within the State was 261,622 tons.

and passes at once into the channels of interstate commerce. Three-fourths of it is from open pit mines and one-fourth from underground mines. At the open pit mines empty cars are run from adjacent railroad yards into the mines and there loaded. Steam shovels sever the ore from its natural bed and lift it directly into the cars. When loaded the cars are promptly returned to the railroad yards, where they are put into trains which start the ore on its interstate journey. The several steps follow in such succession that there is practical continuity of movement from the time the ore is severed from its natural bed. The operations within the mine and the movement of the cars into and out of the mine are conducted by the plaintiffs. The subsequent transportation is by public carriers. At the underground mines the plaintiffs dig the ore, bring it to the surface through shafts and put it in elevated pockets where it readily can be loaded into cars. The subsequent movements are much the same as at the open pit mines, but their continuity is not so pronounced. Some of the ore from both kinds of mines—between 10 and 20 per cent.—is concentrated by washing or beneficiated after coming out of the mine and before starting out of the State, but our conclusion respecting the usual operations renders this deflection immaterial.

Plainly the facts do not support the contention. Mining is not interstate commerce, but, like manufacturing, is a local business subject to local regulation and taxation. *Kidd* v. *Pearson*, 128 U. S. 1, 20; *Capital City Dairy Co.* v. *Ohio*, 183 U. S. 238, 245; *Delaware, Lackawanna & Western R. R. Co.* v. *Yurkonis*, 238 U. S. 439, 444; *Hammer* v. *Dagenhart*, 247 U. S. 251, 272; *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, 410. Its character in this regard is intrinsic, is not affected by the intended use or disposal of the product, is not controlled by contractual engagements, and persists even though the

business be conducted in close connection with interstate commerce. *Cornell* v. *Coyne*, 192 U. S. 418; *Browning* v. *Waycross*, 233 U. S. 16, 22; *Delaware, Lackawanna & Western R. R. Co.* v. *Yurkonis, supra; General Railway Signal Co.* v. *Virginia*, 246 U. S. 500; *Hammer* v. *Dagenhart, supra; Arkadelphia Milling Co.* v. *St. Louis Southwestern Ry. Co.*, 249 U. S. 134, 151; *Crescent Cotton Oil Co.* v. *Mississippi*, 257 U. S. 129, 136; *Heisler* v. *Thomas Colliery* Co., 260 U. S. 245.

The ore does not enter interstate commerce until after the mining is done, and the tax is imposed only in respect of the mining. No discrimination against interstate commerce is involved. The tax may indirectly and incidentally affect such commerce, just as any taxation of railroad and telegraph lines does, but this is not a forbidden burden or interference.

The contentions made under the equal protection provision of the Fourteenth Amendment and under the state constitutional provision that "Taxes shall be uniform upon the same class of subjects" present a question of classification and have been argued together.

Consistently with both provisions the legislature of the State may exercise a wide discretion in selecting the subjects of taxation, particularly as respects occupation taxes. It may select those who are engaged in one class of business and exclude others, if all similarly situated are brought within the class and all members of the class are dealt with according to uniform rules. *Southwestern Oil Co.* v. *Texas*, 217 U. S. 114, 121; *State ex rel.* v. *Parr*, 109 Minn. 147, 152. Here the selection is of all who are engaged in mining or producing ores on their own account, that is to say, as owners or lessees. The selection seems to be an admissible one, so we turn to the objections urged against it.

One is that contractors who strip off the overburden of soil, gravel, etc., in open pit mines, other contractors who

load the ore in such mines into cars and still others, usually four in a group, who take ore out of underground mines, are not included. But none of these are engaged in mining on their own account. Instead they are working for those who are so engaged. However important their service, they are not principals in the business, but employees; and their pay, whatever it be, is part of the expense of the business. Their omission has a reasonable basis.

Another objection is that all owners and lessees who mine or produce ore are included while those who do extensive development work, but remove no ore, are omitted. This is not fairly subject to criticism. Equality does not require that unproductive mining be taxed along with productive mining. Besides, if ore is uncovered or made accessible by such development work the tax will be imposed when the ore is mined.

Among the deductions which the act provides shall be made from the value of the ore before computing the tax is "The amount of royalties paid on the ore mined and produced during the year." This provision is assailed as working a serious discrimination in favor of those who operate under leases and pay royalties, as all the lessees do, and against owners who operate their own mines and pay no royalties. The question is an important one and has not been before the Supreme Court of the State. It apparently requires a construction of the particular provision along with other parts of the act, and possibly of the state constitutional provision. After that it may be that there would be need for turning to the Fourteenth Amendment. "Only those whose rights are directly affected can properly question the constitutionality of a state statute and invoke our jurisdiction in respect thereto." *Hendrick* v. *Maryland*, 235 U. S. 610, 621; *Hatch* v. *Reardon*, 204 U. S. 152, 160; *Plymouth Coal Co.* v. *Pennsylvania*, 232 U. S. 531, 544. The record shows that of the many iron mines in the State all but six are operated

under leases and that none of the six was operated in any way during 1921, the year in respect of which the tax was about to be imposed when these suits were begun. Therefore no tax could be imposed in respect of the six mines based on that year's operations, and it is made plain that the defendants have no purpose to impose one. It cannot be merely assumed that mining has been resumed at those mines nor that any tax in respect of them for later years is now threatened. The situation in these cases is therefore such that none of the plaintiffs is entitled to invoke a decision of the question. We accordingly leave it entirely open.

It also is said that the royalty provision and others respecting deductions will work a discrimination as between different lessees in that some will be subjected to a higher tax than others. No doubt there will be differences in the amount, but they will result from differences in situation and not from differences in treatment. Some lessees pay higher royalties than others and will secure a higher deduction on that score. Some are subjected to greater expense in mining than others and will secure reductions accordingly. And some are subjected to higher local taxes on their mines than others—the mines being scattered through several counties and minor municipal subdivisions—and this will cause the deductions to vary. But all lessees will have the benefit of deductions adjusted to the royalties, expenses and taxes actually paid; and the value of the ore, according to which the tax will be computed, will in each instance be its actual value when it is brought out of the mine less those deductions. In short, the tax is to be adjusted to the value of the output less the major expenses of the business, and this according to uniform rules. We, therefore, cannot say that it is intended to or will work any arbitrary or unreasonable discrimination as between different lessees.

Decrees affirmed.